AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT

1. CONTRACT ID CODE	PAGE OF PAGES
	1a

2. AMENDMENT/MODIFICATION NO.	3. EFFECTIVE DATE	4. REQUISITION/PURCHASE REQ. NO.	5. PROJECT NO. *(If applicable)*
M175	Nov. 1, 1999		

6. ISSUED BY CODE

U.S. Department of Energy
TJNAF Site Office
12000 Jefferson Avenue
Newport News, VA 23606

7. ADMINISTERED BY *(If other than Item 6)* CODE

8. NAME AND ADDRESS OF CONTRACTOR *(No., street, county, State and ZIP Code)*

Southeastern Universities Research
Association, Inc.
1200 New York Avenue, NW
Suite 710
Washington, D.C. 20005

CODE FACILITY CODE

(X) 9A. AMENDMENT OF SOLICITATION NO.

9B. DATED *(SEE ITEM 11)*

10A. MODIFICATION OF CONTRACT/ORDER NO.

DE-AC05-84ER40150

X 10B. DATED *(SEE ITEM 13)*

August 3, 1984

11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS

☐ The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offers ☐ is extended, ☐ is not extended.

Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended, by one of the following methods:

(a) By completing Items 8 and 15, and returning _____ copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.

12. ACCOUNTING AND APPROPRIATION DATA *(If required)*

N/A

13. THIS ITEM APPLIES ONLY TO MODIFICATIONS OF CONTRACTS/ORDERS, IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.

	A. THIS CHANGE ORDER IS ISSUED PURSUANT TO: *(Specify authority)* THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A.
	B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES *(such as changes in paying office, appropriation date, etc.)* SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(b).
X	C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF: Public Law 98-369, FAR 6.302-3(a)(2)(ii), the Secretary's Decision Memorandum dated August 14, 1998, and the HQ Office of Management Systems approval letter dated October 28, 1999
	D. OTHER *(Specify type of modification and authority)*

E. IMPORTANT: Contractor ☐ is not, ☒ is required to sign this document and return 2 copies to the issuing office.

14. DESCRIPTION OF AMENDMENT/MODIFICATION *(Organized by UCF section headings, including solicitation/contract subject matter where feasible.)*

The purpose of this modification is to revise the subject contract in its entirely (copy attached) and extend the period of performance until September 30, 2004.

Except as provided herein, all terms and conditions of the document referenced in Item 9A or 10A, as heretofore changed, remains unchanged and in full force and effect.

15A. NAME AND TITLE OF SIGNER *(Type or print)*	16A. NAME AND TITLE OF CONTRACTING OFFICER *(Type or print)*
Jerry P. Draayer, President	James W. Skinner, Contracting Officer

15B. CONTRACTOR/OFFEROR	15C. DATE SIGNED	16B. UNITED STATES OF AMERICA	16C. DATE SIGNED
Jerry P. Draayer *(Signature of person authorized to sign)*	10/29/99	BY James W. Skinner *(Signature of Contracting Officer)*	10-29-99

PART I

SECTION B

SUPPLIES OR SERVICES AND PRICES/COSTS

TABLE OF CONTENTS

PART I

SECTION B - SUPPLIES OR SERVICES AND PRICES/COSTS

B.1 - SERVICE BEING ACQUIRED

The Contractor shall ensure that the personnel, facilities, equipment, materials, supplies, and services, (except such facilities, equipment, materials, supplies and services as are furnished by the Government), are available and together with all of the foregoing, shall perform in a quality, timely, and cost-effective manner the Statement of Work (SOW) set forth in Part I, Section C.1 of this contract. The Contractor shall perform all work in a manner that complies with applicable health, safety and environmental laws and regulations.

B.2 - OBLIGATION OF FUNDS AND FINANCIAL LIMITATIONS

The amount presently obligated by the Government with respect to this contract is specified in Clause I.79 - DEAR 970.5204-15 - Obligation of Funds (APR 1994). Other financial limitations are also specified in Clause I.79 - DEAR 970.5204-15 - Obligation of Funds (APR 1994).

B.3 - FIXED FEE

The fixed fee payable to the Contractor for the performance of the work under this contract commencing November 1, 1999 are specified in Clause I.78 - DEAR 970.5204-13 - Allowable Costs and Fixed Fee (Management and Operating Contracts) (MAR 1998) (Deviation).

PART I

SECTION C

DESCRIPTION/SPECIFICATIONS/WORK STATEMENT

TABLE OF CONTENTS

PART I

SECTION C - DESCRIPTION/SPECIFICATIONS/WORK STATEMENT

C.1 - STATEMENT OF WORK

The Statement of Work to be performed under this contract is as follows:

(a) General Scope of SURA's Undertaking/Engagement of Contractor

The DOE expressly engages SURA to perform research and to design, construct, test, commission, manage, operate, maintain and protect the existing and proposed facilities described below and to perform the work and services described in this contract. SURA undertakes and promises to use its best efforts to design, construct, test, commission, manage, operate, maintain, protect (and if necessary decommission) said existing and proposed facilities and to perform said work and services and satisfy all the terms and conditions herein provided. SURA shall use its best judgment, skill and care in all matters pertaining to the performance of this contract. SURA shall not be required to operate the facilities described below in any manner which it deems unsafe to personnel (including any third parties and members of the public) or the facilities, and SURA shall notify DOE when SURA believes the facilities cannot be operated safety. Such notification shall include a basis for such conclusion and a recommendation for appropriate corrective action.

(b) Description of Work

(1) Jefferson Lab is a laboratory for unclassified research established by DOE as a User Facility providing a unique resource for the DOE Office of Science's scientific program and its related user community. In this regard, Jefferson Lab's primary research mission will be in nuclear physics and any secondary or collateral activities should be compatible with and supportive of this primary mission. As such, the DOE and SURA agree, consistent with other terms of this contract, to provide an open environment to maximize the creativity of Jefferson's scientific resources in an environmentally sound, safe manner with due concern for property protection, quality and economy.

(2) Consistent with paragraph (1) above, SURA shall:

(i) Provide the scientific, technical and administrative leadership, management and skills to sustain and enhance Jefferson Lab

as a forefront user research facility that meets high expectations and standards of its user community.

(ii) Operate and maintain a continuous wave (CW) electron accelerator capable of producing electron beam of at least 4 billion electron volt (4 GeV) energy, 200 microamperes current at the 4 GeV energy level, and high duty factor, along with associated beam distribution systems, experimental areas and equipment.

(iii) Develop the scientific and administrative infrastructure, including research and support staff required for future use of the Jefferson Lab facility, and operate the Jefferson Lab facility as a national and international unclassified research center for forefront research, primarily in nuclear physics and other related activities under the auspices of the Office of Science; and,

(iv) Sustain and enhance in collaboration with the Laboratory's user community, a forefront research program that utilizes Jefferson Lab's resources to seek opportunities with the highest possible scientific merit.

(v) Design, construct, operate and maintain the necessary related laboratory facilities to support the accelerator operations and physics research program.

(vi) Provide the necessary facilities to support national and international user research at Jefferson Lab.

(vii) Conduct experimental and theoretical physics research and host meetings and seminars involving science and technologies related to Jefferson Lab's scope and publish the results of such research in appropriate scientific journals.

(viii) Develop long-range objectives for the laboratory consistent with its Institutional Plan and in support of DOE's missions. Plan and coordinate upgrades to the accelerator and associated equipment in accordance with the Laboratory’s Institutional Plan as approved by DOE and as funding is provided.

(ix) Support the activities of Jefferson Lab committees such as the Program Advisory Committee (PAC), Technical Advisory Panel (TAP), Administrative Peer Review Committee, Jefferson Lab User Conferences, and such review committees as may assist

SURA in developing and maintaining the world's forefront nuclear physics laboratory.

(x) Require the use of Jefferson Lab facilities for the purpose of conducting approved experiments/ technology transfer initiatives to be governed by the provisions of a user facility agreement in a form acceptable to the Contracting Officer.

(xi) Perform other services in support of or related to the above described work.

(xii) Provide or perform all other services reasonably necessary to meet its obligations under this contract.

(xiii) Provide Operating & Maintenance Services and EH&S Advisory Services – ARC Building:

(1) SURA shall perform the operating & maintenance (O&M) services and environmental, health and safety (EH&S) advisory services in accordance with the Memorandum of Agreement (Appendix J) between the Economic Development Authority of the City of Newport News and the Southeastern Universities Research Association, Inc. of October 1, 1998.

(2) The cost incurred by SURA in performing such services shall be in accordance with the provisions of Article I.78 entitled “Allowable Cost and Fixed Fee.”

(3) The costs incurred by SURA in performing O&M services shall be reimbursed by the Economic Development Authority in accordance with paragraph 4 of the Memorandum of Agreement. Any costs that are not reimbursed by the Economic Development Authority in accordance with paragraph 4 of the Memorandum of Agreement shall be forwarded to the Contracting Officer for a determination of allowability.

(4) SURA will provide an annual report at the end of each fiscal year detailing the costs incurred in performing O&M services and EH&S advisory services for the Economic Development Authority and costs reimbursed by the Economic Development Authority for the O&M services.

(3) In recognition that the safety and health of workers and the public and the protection and restoration of the environment are fundamental

responsibilities which SURA assumes for work performed under this contract, SURA shall:

(i) Take necessary actions to minimize serious injuries and/or fatalities and prevent worker exposures and environmental releases in excess of established limits.

(ii) In concert with DOE, establish specific environmental, safety, and health performance indicators for activities which are the basis for measuring progress toward continuous improvement.

(iii) Establish clear environmental, safety, and health priorities and manage activities in proactive ways that effectively increase protection to the environment and to public and worker safety and health.

(iv) Reduce ES&H uncertainties by prioritizing and addressing risks, thereby eliminating threats from site activities.

(v) Carry out all activities in a manner that complies with applicable human health, safety and environmental laws and regulations; minimizes wastes; and complies with applicable regulatory requirements and applicable DOE Directives.

(vi) Develop and implement an Integrated Safety Management System that is approved by the Contracting Officer.

(4) Technology Transfer and Cooperation with Industrial Organizations

The Contractor shall contribute to U.S. technological competitiveness through research and development partnerships with industry that capitalize on the Laboratory's expertise and facilities and are compatible with and supportive of the Laboratory’s primary mission. Principal mechanisms to effect such contributions are: cooperative research and development, access to user facilities, reimbursable work for non-DOE activities, personnel exchanges, and licenses.

The Contractor shall cooperate with industrial organizations to assist in increasing U.S. industrial competency and contributions to applications of energy science and technology. Such cooperation may include an early transfer of information to industry by arranging for the active participation by industrial representatives in the Laboratory's programs. Cooperation with industrial partners may include long-term strategic partnerships aimed at commercialization of Laboratory inventions or the improvement of industrial products. The Laboratory will respond to specific near-term

technological needs of industrial companies with special consideration given to working with small, small disadvantaged and women-owned businesses. The Laboratory may also capitalize on its location in the industrial Southeast by developing productive relationships with regional and local companies and through forums such as conferences, workshops, and traveling presentations.

Cooperation may also include use by industrial organizations of Laboratory facilities and other assistance as may be authorized, in writing, by the Contracting Officer.

(5) Science and Mathematics Education and Other Cooperation with Research and Educational Institutions

The Contractor shall work extensively with colleges and universities, with special consideration on Historically Black Colleges and Universities/Minority Education Institutions, and programs to enhance science and mathematics education at all levels. Participation by a diverse group of faculty and students in Laboratory programs brings their talents to bear on important research problems and contributes to the education of future scientists and engineers. The Laboratory shall also conduct many programs for precollege students and faculty to enrich mathematics and science education. A particular purpose of these programs is to encourage members of under-represented societal groups to enter careers in science and engineering.

The Laboratory's broad program of cooperation with the academic and educational community and with nonprofit research institutions has the purpose of promoting research and education in scientific and technical fields of interest to DOE's programs and facilitating interrelationships in these fields between the Laboratory and other research and educational institutions. This cooperation may include, but is not limited to, such activities as the following:

(i) Joint experimental programs with colleges, universities, and nonprofit research institutions;

(ii) Interchange of college and university faculty and Laboratory staff;

(iii) Student/teacher educational research programs at the pre-collegiate and collegiate level;

(iv) Post-doctoral programs;

(v) Arrangement of regional, national, or international professional meetings or symposia;

(vi) Use of special Laboratory facilities by colleges, universities, and nonprofit research institutes; or

(vii) Provision of unique experimental materials to colleges, universities, or nonprofit research institutions or to qualified members of their staffs.

(6) Diversity

The Laboratory shall create and maintain an environment that values diversity, fully utilizes the talents and capabilities of a diverse workforce and does not tolerate discrimination or harassment in any form. The Contractor seeks to recruit a diverse workforce by promoting and implementing Departmental and Laboratory goals with special consideration given to Historically Black Colleges and Universities/Minority Education Institutions. The Contractor will also strive to promote diversity in all of the Laboratory's subcontracting efforts with consideration on the use of small, small disadvantaged and women-owned businesses, and the Small Business Administration's 8(a) program.

(7) International Collaboration

In accordance with DOE policies, and in consultation with DOE, the Contractor will maintain a broad program of international collaboration in areas of research of interest to the Laboratory and to DOE. This collaboration will be both in areas where DOE has formal international cooperation agreements which assign the Contractor a specific role, as well as in areas of general interest to the Laboratory's and DOE's research programs.

This collaboration may include, but is not limited to, such activities as:

(i) Participation in assigned aspects of formal international agreements;

(ii) Maintenance of liaison with peer groups in the international R&D community;

(iii) Participation in programs of international scientific organizations;

(iv) Developing and proposing to DOE, joint experimental programs and/or work for others from international sponsors; or

(v) Participation in programs involving visits, assignments, or exchanges of staff/students.

(8) General Assistance and Services

The Contractor shall furnish such technical and scientific assistance (including training and other services, material, and equipment), which are consistent with and complementary to the DOE's and Laboratory's mission under this contract, both within and outside the United States. The Contractor may provide these services to the DOE and its installations, contractors, and interested organizations and individuals, as may be authorized, in writing, by the Contracting Officer.

(9) Other Research and Development Work

The Laboratory shall conduct research and development work for non-DOE sponsors which is consistent with and complementary to the DOE's mission and the Laboratory's mission under the contract, does not adversely impact or interfere with execution of DOE-assigned programs, does not place the facilities or Laboratory in direct competition with the domestic private sector, and for which the personnel or facilities of the Laboratory are particularly well adapted and available, as may be authorized, in writing, by the Contracting Officer.

(10) Dissemination of Information

The Laboratory shall undertake activities pertaining to the dissemination of information relating to energy in general and Laboratory programs in particular and the stimulation and encouragement of such work by employees of the Contractor and users of the Laboratory, subject to the patent provisions and other applicable provisions of this contract.

(11) Management and Maintenance of Laboratory Facilities

The Contractor is responsible for the operation, including management and maintenance, of the Laboratory physical plant. This includes the planning in consultation with DOE, and the making of recommendations to DOE, for new buildings, facilities and utilities and alteration of existing buildings, facilities, and utilities on the Laboratory site and elsewhere, including the furnishing of all necessary basic design and operating criteria. The Contractor will provide for the design, engineering, construction, and alteration, by subcontract or otherwise, of such buildings, facilities, and utilities on the Laboratory site and elsewhere as authorized or approved, in writing, from time to time by DOE. Before proceeding with other than design aspects of any project which the Contractor, acting in good faith, considers may reasonably be within the

coverage of the Davis-Bacon Act (40 U.S.C. 276a and following), the Contractor shall obtain a written determination by the Contracting Officer as to the applicability of the Davis-Bacon Act to such project. When it is determined that the Davis-Bacon Act does cover a particular work project, the Contractor shall procure by subcontract the covered work in accordance with DOE approved procedures.

(12) Other Subcontracting

The Contractor shall, when directed by the Contracting Officer, in writing, and may, but only when authorized by the Contracting Officer, as set forth elsewhere in this contract, enter into subcontracts for the performance of any part of the work under this Clause.

(13) Energy Management

The Contractor shall take all reasonable measures to improve the energy efficiency at the Laboratory sites in accordance with paragraph (d) of Clause I.105 - DEAR 970.5204-60 - Facilities Management (NOV 1997).

(c) General Responsibilities of the Parties

(1) Basic Considerations

It is the primary aim of DOE and the Contractor in executing this contract to provide an instrument under which the Laboratory will continue to be strengthened as a research, development and demonstration resource of DOE so that the work outlined in paragraph (a) of this Article will be carried on most effectively. The Parties agree that the following principles are important to the realization of this goal:

(i) The benefits of Contractor operation of Government-owned research and development installations are most fully attained when the Contractor, within the terms of the contract, effectively brings its management experience and capabilities to bear on the contract activities.

(ii) The research and development capability of the Laboratory and the strength of universities of the Southeast and the Nation will benefit by a greater degree of participation by highly qualified university and industry staff in programs at the Laboratory.

(iii) The direction of the Laboratory must be in the hands of highly competent managerial and professional personnel, capable of attracting, retaining and managing a highly skilled and respected workforce of scientific, administrative and support personnel,

possessing skills to manage and operate in a cost-effective manner, a Laboratory with extensive facilities and a wide range of programs.

(iv) The competence and quality of any research organization is based upon and flows from the competence and quality of those individuals who are actively engaged in the creative scientific and engineering work carried on by the organization.

(v) The Parties agree that safety of operations and equipment, protection of the environment, and worker and public safety will be given the highest priority in the conduct of Laboratory activities; Provided, however, that whenever decommissioning, decontamination or other major environmental, safety or health projects necessitate substantial funding, DOE will cooperate to the extent feasible with the Contractor to permit the projects to be scheduled and funded in such a way as to minimize interference with ongoing research and development programs.

(vi) Experience has indicated that high quality basic and applied research work can best be carried on and maintained by permitting the individual investigators to pursue work with the freedom essential for effective creative effort.

(vii) Applied research and development work entails a greater degree of program coordination both by the Laboratory and by DOE. Responsiveness by the Contractor to DOE program needs and requests strengthens the effectiveness of the Laboratory arrangement.

(viii) Research and development work at the forefront of the scientific and technical fields which lie within the scope of the Contractor's responsibility requires the most suitable equipment, experimental facilities and library resources available.

(ix) The management of the business and administrative aspects of the Laboratory must be supportive of a creative and dynamic Laboratory.

In furtherance of the performance of the work under this contract and in light of the foregoing basic considerations, the Parties have agreed upon the statements of their responsibilities as set forth in the following sections, which shall be carried out in a cooperative spirit toward achieving their common objectives.

(2) DOE's Responsibilities

The proper discharge of DOE's responsibilities requires that it shall have the power to exercise general cognizance over the contract work to adequately fulfill these responsibilities, and to have full access to information concerning performance of such work. In order to discharge its responsibilities under this contract, DOE shall, subject to other provisions of this contract:

(i) Review the Contractor's major policies and procedures affecting administration (such as finance, procurement, human resources, litigation management, employee protection, etc.), environmental, safety and health, and operation (such as maintenance, construction management, facilities, etc.) of the Laboratory.

(ii) Formulate a coordinated program, taking into consideration proposals submitted by the Contractor, which it can support with funds appropriated by the Congress.

(iii) Recognize the need, in planning its budgetary and program actions, to consider the role, mission and long-range objectives of the Laboratory as expressed in the approved Institutional Plan.

(iv) Plan its budgetary and program actions in consultation with the Contractor, with due recognition of the fact that sharp increases and decreases in funding may affect overall Laboratory effectiveness.

(v) Recognize the need to provide the Laboratory with the facilities and equipment necessary for the effective execution of approved work.

(vi) Keep the Laboratory and the Contractor advised, where pertinent, of DOE's scientific and technological activities, of information developed within DOE's programs, and of its current long-range objectives.

(vii) Conduct reviews of program objectives and accomplishments and effectiveness of Laboratory management and consult with the Contractor regarding matters of mutual interest.

(3) Contractor's Responsibilities

The Contractor agrees that the performance of work and services pursuant to the requirements of this contract shall conform to high professional standards. The Contractor shall use its best efforts to efficiently manage the Laboratory in carrying out DOE-approved

programs, in accordance with policies established by DOE and as specifically set forth in other provisions of this contract. The Contractor recognizes DOE is responsible for the conduct of all programs and for assuring that the Government funds are properly and effectively utilized.

In order to discharge its responsibilities under this contract, the Contractor shall, subject to other provisions of this contract:

(i) Provide technically competent, productive and efficient scientific, engineering, professional, managerial and support personnel capable of performing outstanding, high quality work.

(ii) Create and maintain at the Laboratory an intellectual environment conducive to the stimulation of imaginative research and development work for carrying out DOE's program.

(iii) Formulate, review, and approve Laboratory policies and programs.

(iv) Develop long-range objectives for the Laboratory; formulate and revise an annual Institutional Plan covering the proposed work to be conducted at the Laboratory, together with master plans for staff and facilities required to carry out the recommended work; evaluate the programmatic accomplishments at the Laboratory on a continuing basis; and assure that the efforts at the Laboratory are consistent with the Institutional Plan and are directed toward programs that show the most promise and away from less promising programs which in the judgment of the Contractor should be reduced or eliminated.

(v) Assure that the results of the scientific and engineering work performed at the Laboratory and funded by DOE, other Federal agencies, or other sponsors for which an exception from full cost recovery has been made are fully and currently reported to DOE and/or the other sponsors, to the scientific and engineering community, to industry, and to the general public following internal review for quality and accuracy by:

(A) Following normal scientific and technical practices in the reporting of results through the recognized technical journals and consistent with guidance provided by DOE, through DOE's reporting system; and

(B) Furnishing such additional scientific or technical reports as are requested by DOE. The DOE agrees to collaborate with the Laboratory in determining the necessity, form, and frequency of such additional reports.

(vi) Assure that the Laboratory staff keeps itself abreast of worldwide scientific and technological developments in areas relevant to work under this contract.

(vii) Recognize the need in developing, formulating and carrying out the policies, programs and contract activities to give due regard to the guidance which DOE may furnish from time to time with respect to its laboratories, as well as DOE guidance relating to programs at the Laboratory.

(viii) Provide for a wide range of advice from other universities and from high technology industry in determining policies for the operation of the Laboratory.

(ix) Continue, except as otherwise agreed, to maintain the Laboratory as nearly as may be practicable, consistent with adequate direction and control by the Contractor, as a self-contained administrative unit.

(x) Establish policies and objectives for cooperative research and educational programs between the scientific and technological community and the Laboratory.

(xi) Operate the Laboratory's facilities and carry on its programs in a manner designed to protect the health and safety of its employees and the general public and to protect the environment.

(xii) Consistent with the principles of Integrated Safety Management, assure the safety, operability, and functional adequacy of all Laboratory facilities and systems and comply with applicable DOE quality assurance, environmental, safety, and health standards.

(xiii) Assure the safeguards and security of all Laboratory facilities and systems and comply with applicable DOE safeguards and security directives as directed by the Contracting Officer.

(xiv) Manage the Laboratory with prudent business judgment to support a creative and dynamic Laboratory.

(xv) Keep DOE informed on its major activities under this contract.

(xvi) Recognize that appraisals are an integral part of DOE administration and be appropriately responsive to such reports and functional and programmatic appraisals conducted by DOE.

(xvii) Cooperate in every reasonable way with individuals or groups whose expert or consultative services DOE may choose to use to review and evaluate the scientific, technical, or other aspects of the contract work.

(xviii) Consistent with the principles of Integrated Safety Management, establish and maintain clear and effective operational, environmental, safety and health, and administrative policies and procedures covering the operation of the Laboratory.

(xix) Review and approve all Laboratory budget proposals, staffing plans, plans for modifying existing facilities and programs, and plans for establishing new facilities and programs.

(xx) Establish policies regarding the extent to which Laboratory scientific facilities may be made available for use by persons other than the Laboratory staff and to establish criteria and means for deciding priorities among the users of Laboratory facilities. Whenever applicable, due consideration shall be given to the advice of the Laboratory's Program Advisory Committees.

(xxi) Encourage the training of students, teachers and other research personnel, including university-level students and faculty, at the Laboratory as a means of broadening the training capabilities of the universities of the Southeast and of other educational institutions throughout the country for the purpose of increasing the total capability of the Nation for the training of research personnel.

(xxii) Secure vigorous participation in the Laboratory's programs by staff from other research institutions and industrial organizations, as appropriate, in a substantial and mutually beneficial manner.

(xxiii) Assure that, when Laboratory development work has reached the point at which industry can be expected to carry it into productive use, information regarding such work is made generally available to industry.

(xxiv) Select, manage and direct the employees at the Laboratory and provide the scientific, technical and managerial personnel necessary to maintain a comprehensive scientific laboratory and to perform the work under this contract. Provide such other personnel or services as are necessary to operate and maintain the Laboratory facilities. In establishing or modifying levels of compensation and fringe benefits for employees, it is understood that the Contractor is guided by the following considerations:

(A) The Contractor should adopt wage, salary, and employee benefit policies and practices which will provide a technically competent, productive and efficient workforce consistent with the terms of this contract. One of the factors to be considered in establishing these policies and practices is the various labor markets, local, national and international, from which it competes for its employees.

(B) Subject to other considerations stated in the contract, the normal and typical aspects of wages, hours, and working conditions (which are the substance of collective bargaining) are left to negotiations between the Contractor and organized groups of employees.

(xxv) Encourage employees to continue their intellectual development and, as the occasion arises, to revitalize or re-orient their activities in order to maintain a staff of maximum capability adaptable to the needs of DOE programs.

(xxvi) Regularly assess the performance benefits of contracting out vs. in-house performance and report the results of these assessments to DOE.

(4) Administration of Responsibilities of the Parties

Unless DOE otherwise notifies the Contractor, in writing, DOE's responsibilities under this contract shall be administered by the Jefferson Lab Site Office Contracting Officer, or designated representative. The Contractor shall keep the Contracting Officer advised of the names of persons authorized to represent it with regard to various matters.

(5) Freedom of Publication

Subject to other provisions of this contract, Laboratory investigators shall have full freedom of publication of the results of unclassified basic research work conducted pursuant to this contract, in order to promote scientific progress and technical development, provided that the provisions designed to protect "restricted data", "formerly restricted data", "National Security Information" shall be complied with, that the appropriate patent clearances are obtained, that appropriate licenses and notices are effected, and that DOE policies regarding protection and dissemination of "Applied Technology", Controlled Scientific and Technical Information, or sensitive information are followed. It is agreed

by all Parties that it is desirable in public releases to acknowledge fully the contributions of all parties to work thus reported.

C.2 - PLANS AND REPORTS

The Contractor shall submit periodic plans and reports, in such form and substance as required by the Contracting Officer. These periodic plans and reports shall be submitted at the interval, and to the addresses and in the quantities as specified by the Contracting Officer. Where specific forms are required for individual plans and reports, the Contracting Officer shall provide such forms to the Contractor. The Contractor shall be responsible for levying appropriate reporting requirements on any subcontractors in such a manner to ensure that data submitted is compatible with the data elements that the prime contractor is responsible for submitting to DOE. Plans and reports which may be submitted in compliance with this provision are in addition to any other reporting requirements found elsewhere in other clauses of this contract. Notwithstanding the “Changes” clause of this contract, set forth in Part II, Section I - Contract Clauses, the Contracting Officer may require plans and reports to be submitted pursuant to the above without any adjustment in the fee, if any, under this contract.

PART I

SECTION D

PACKAGING AND MARKING

TABLE OF CONTENTS

PART I

SECTION D - PACKAGING AND MARKING

D.1 - PACKAGING

Preservation, packaging, and packing for shipment or mailing of all work delivered hereunder shall be in accordance with good commercial practice and adequate to insure acceptance by common carrier and safe transportation at the most economical rates.

D.2 - MARKING

Each package, report or other deliverable shall be accompanied by a letter or other document which:

(a) Identifies the contract number under which the item is being delivered.

(b) Identifies the contract requirement or other instruction which requires the delivered item(s).

PART I

SECTION E

INSPECTION AND ACCEPTANCE

E.1 - FAR 52.246-9 - Inspection of Research and Development (Short Form) (APR 1984)

PART I

SECTION E - INSPECTION AND ACCEPTANCE

E.1 - FAR 52.246-9 - INSPECTION OF RESEARCH AND DEVELOPMENT (SHORT FORM) (APR 1984)

The Government has the right to inspect and evaluate the work performed or being performed under the contract, and the premises where the work is being performed, at all reasonable times and in a manner that will not unduly delay the work. If the Government performs inspection or evaluation on the premises of the Contractor or a subcontractor, the Contractor shall furnish and shall require subcontractors to furnish all reasonable facilities and assistance for the safe and convenient performance of these duties.

PART I

SECTION F

DELIVERIES OR PERFORMANCE

TABLE OF CONTENTS

PART I

SECTION F - DELIVERIES OR PERFORMANCE

F.1 - PERIOD OF PERFORMANCE

In accordance with this Contract Modification M175, the performance of the work described in Part I, Section C - Description/Specifications/Work Statement shall commence on October 1, 1999 and shall continue up to and including September 30, 2004. This Modification M175 is an extension of Contract DE-AC05-84ER-40150, dated August 3, 1984 and currently in effect through September 30, 2004.

F.2 - FAR 52.242-15 - STOP WORK ORDER (AUG 1989) - ALTERNATE I (APR 1984)

(a) The Contracting Officer may, at any time, by written order to the Contractor, require the Contractor to stop all, or any part, of the work called for by this contract for a period of 90 days after the order is delivered to the Contractor, and for any further period to which the parties may agree. The order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within a period of 90 days after a stop work is delivered to the Contractor, or within any extension of that period to which the parties shall have agreed, the Contracting Officer shall either --

(1) Cancel the stop-work order; or

(2) Terminate the work covered by the order as provided in the Termination clause of this contract.

(b) If a stop-work order issued under this clause is canceled or the period of the order or any extension thereof expires, the Contractor shall resume work. The Contracting Officer shall make an equitable adjustment in the delivery schedule, the estimated cost, the fee, or a combination thereof, and in any other terms of the contract that may be affected, and the contract shall be modified, in writing, accordingly, if --

(1) The stop-work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this contract; and

(2) The Contractor asserts its right to the adjustment within 30 days after the end of the period of work stoppage; provided, that, if the Contracting Officer decides the facts justify the action, the Contracting Officer may receive and act upon the claim submitted at any time before final payment under this contract.

(c) If a stop-work order is not canceled and the work covered by the order is terminated for the convenience of the Government, the Contracting Officer shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.

(d) If a stop-work order is not canceled and the work covered by the order is terminated for default, the Contracting Officer shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.

F.3 - PRINCIPAL PLACE OF PERFORMANCE

The principal place of contract performance is at the site of the Thomas Jefferson National Accelerator Facility (otherwise known as Jefferson Lab) in Newport News, Virginia.

PART I

SECTION G

CONTRACT ADMINISTRATION DATA

TABLE OF CONTENTS

PART I

SECTION G - CONTRACT ADMINISTRATION DATA

G.1 - DOE CONTRACTING OFFICER

For the definition of Contracting Officer see Part II, Section I, Clause I.1 - DEAR 952.202-1 - Definitions (OCT 1995), of this contract. The Contracting Officer is the only individual who can:

(1) assign additional work within the general scope of the Statement of Work of the contract;

(2) issue a change as defined in the “Changes” clause of the contract;

(3) change any of the expressed terms, conditions or specifications of the contract;

(4) accept non-conforming work; or

(5) waive any requirement of this contract.

G.2 - CONTRACT ADMINISTRATION

The contract will be administered by:

U.S. Department of Energy
Jefferson Lab Site Office
12000 Jefferson Avenue
Newport News, Virginia 23606

Written communications shall make reference to the contract number and shall be mailed to the above address except for correspondence regarding patent or intellectual property related matters which should be addressed to:

U.S. Department of Energy
Oak Ridge Operation Office
Office of Chief Counsel (CC-10) - Intellectual Property
200 Administration Road
Oak Ridge, TN 37830

Information copies of patent related correspondence should be sent to the Contracting Officer.

G.3 - DESIGNATION OF CONTRACTING OFFICER'S REPRESENTATIVE (COR)

(a) (1) The Contracting Officer's Representative for this contract is the Manager of the Jefferson Lab Site Office. The alternative COR is the Deputy Manager of the Jefferson Lab Site Office. The alternate COR has the full authority of the COR in his absence.

(2) The above-named position is designated the authorized COR for this contract. As such, this individual is responsible for monitoring, giving progress reports to the Contracting Officer and overall technical surveillance of services to be performed under this contract and should be contacted regarding questions or problems of a technical nature. In no event will any understanding or agreement, modification, change order, or matter deviating from the terms of the basic contract between the Contractor and any person other than the Contracting Officer be effective or binding upon the Government.

(3) When, in the opinion of the Contractor, the COR requests effort outside the existing scope of the contract, the Contractor will promptly notify the Contracting Officer in writing. No such action will be taken by the Contractor under such technical instruction unless the Contracting Officer has issued a contractual change.

(b) List of duties to be performed by the COR in the administration of this Contract:

(1) Consistent with the provisions of this contract, furnish direction to the contractor as required for the satisfactory accomplishment of the work within the scope of work and terms and conditions of the contract. As a general rule, such direction would take the form of transmitting requirements as opposed to prescribing detailed procedures.

COR has the authority to suspend work for environmental, safety, and health noncompliance reasons, or when a clear and present danger exists to workers, members of the public, or the environment. Clear and present danger is a condition or hazard which could reasonably be expected to cause death or serious harm to workers, members of the public, or the environment immediately or before such condition or hazard can be eliminated through normal procedures. The Contracting Officer may further delegate the authority to suspend work to the Surveillance Representatives identified in the "Jefferson Lab Site Office Surveillance Representative Program Description."

(2) Administer and exercise oversight of the contractor's performance.

(3) Assure that changes in the statement of work or period of performance are issued by the written contract modification by the Contracting Officer before the contractor proceeds with the changes.

(4) Interpret the technical requirements of the contract for the Contractor.

(5) Report to the Contracting Officer all technical questions arising from the contract which cannot be resolved without increased costs, alterations, or changes to the contract's statement of work.

(6) Review progress, technical, and management reports and determine whether work accomplished is commensurate with approved budgets.

(7) Inform the Contracting Officer of any performance failure by the contractor.

(8) Assure that the Department meets its contractual obligations to the contractor, including the government-furnished equipment and services called for in the contract, and timely government comments on, or approval of, the required contract deliverables.

(9) Responsible for the inspection and acceptance of services performed, including deliverables.

(c) For the purpose of administration of contract matters which are legally based, such as matters relating to litigation and claims which have been initiated against the contractor, or which the Contractor (with the Contracting Officer's approval) has initiated, or matters which are related to the Contractor's retention of outside legal counsel for consultative purposes, the Contracting Officer has appointed attorneys in the Oak Ridge Operations Office of the Chief Counsel as Contracting Officer's Representatives. The Contracting Officer may also appoint other attorneys in the Office of Chief Counsel, as he or she deems necessary, to serve as Contracting Officer's Representative.

PART I

SECTION H

SPECIAL CONTRACT REQUIREMENTS

TABLE OF CONTENTS

CLAUSE H.1 - ADDITIONAL DEFINITIONS

(a) "Contractor" means the Southeastern Universities Research Association, Inc., a non-profit corporation organized under the laws of the Commonwealth of Virginia for educational and scientific purposes; also referred to as "SURA."

(b) "Laboratory" means the Thomas Jefferson National Accelerator Facility in Newport News, Virginia, which is also referred to as "TJNAF" or “Jefferson Lab.” (Previously known as the “Continuous Electron Beam Accelerator Facility” or “CEBAF.”)

(c) The term "someone acting as the Laboratory Director" means the person appointed as Laboratory Director, the Deputy Director acting in the absence of the Laboratory Director, or a person specified in writing to have authority to act in the absence of the Laboratory Director and Deputy Director.

(d) Except as otherwise provided in this contract, the term "Contractor's managerial personnel" means the Contractor's directors, officers [trustees] and any of its managers, superintendents, or other equivalent representatives who have supervision or direction of (1) all or substantially all of the Contractor's business; or (2) all or substantially all of the Contractor's operation at the Laboratory or any separate location at which this contract is being performed, i.e., Laboratory Director [plus appropriate second tier, e.g., Deputy Director, Chief Operating Officer, etc.] or someone acting as the Laboratory Director.

(e) The term "DOE Directive" means DOE Orders and Notices, Modifications thereto, and other forms of directives, including for purposes of this contract those portions of DOE's Accounting and Procedures Handbook applicable to integrated Contractors, issued by DOE. The term does not include temporary written instructions by the Contracting Officer for the purpose of addressing short-term or urgent DOE concerns relating to health, safety, or the environment.

(f) "TJNAF" or “Jefferson Lab” means the Thomas Jefferson National Accelerator Facility in Newport News, Virginia, which is also referred to as "the Laboratory."

(g) "Government" means the government of the United States of America as represented by the DOE.

(h) "Program Advisory Committee" also referred to as "PAC" is a SURA established committee, comprised of distinguished physicists (experimental and theoretical) from outside Jefferson Lab, charged with the responsibility of reviewing and recommending priorities for the scientific proposals from the international and national physics community for experiments to be performed at Jefferson Lab. Selection criteria to be utilized by the PAC reflect the highest possible scientific merit as the highest value.

(i) "SURA Visiting Committee" is a SURA established committee, appointed by the President of SURA, composed of Laboratory Directors and Distinguished Senior

Scientists, to perform an on-site assessment of the overall management of Jefferson Lab.

(j) "Technical Advisory Panel" also referred to as "TAP" is a SURA established advisory committee that assist SURA in deliberating and considering questions and issues of technical complexity regarding accelerator operations and experimental equipment.

(k) "User Facility" in reference to Jefferson Lab means an open laboratory for unclassified basic research, which serves the international scientific community. The research program is recommended to the Laboratory Director by the Program Advisory Committee (PAC) from written proposals submitted for international research collaborations. The PAC, composed of leading scientists, evaluates the research proposals following oral presentations by collaborating spokespersons, and the basis of scientific merit, the suitability of the research for Jefferson Lab, and the qualifications of the research collaborators.

(l) "Research" means work toward increasing knowledge in science, attempts to determine and exploit the potential of scientific discoveries or improvements in technology, materials, processes, methods, devices, or techniques; and attempts to advance the state of the art in these issues.

(m) "Necessary and Sufficient" means a process that uses a specific protocol and provides for the establishment of a set of standards that will provide a level of protection agreed upon by the Department and the M&O contractor. The objective of the process is to promote a culture based on Environment, Safety and Health (ES&H) standards tailored to the work at the site.

(n) "Necessary Standards" means those standards that are mandated by law or regulation and have a direct impact on the level of protection provided to physically protect the public, the workers and the environment from identified hazards currently present at Jefferson Lab. Certain DOE Radiological Directive Requirements have been included in the "Necessary Standards" set where no other applicable law or regulation existed.

(o) "Sufficient External Standards" - These standards consist of two categories:

1. A "Consensus Standard" from a "Nationally Recognized Organization" that has been specifically referenced in a law or regulation already identified in the "Necessary Column" of the "Set" and is thereby made mandatory by that reference, or

2. A law, regulation, or consensus standard that is not the primary standard for protection but a standard that the Necessary and Sufficient ID Team concluded has value and should supplement the "Necessary Standards" in order to further ensure that the agreed upon level of protection of the people and environment is maintained.

(p) “Sufficient Internal Standards" means those Chapters/Procedures in the contractor's EH&S Manual which, when taken together with the specific provisions in the "Necessary" and "Sufficient External" Standards identified in the "Set" and with other documents, enable the Contractor to implement an agreed to level of protection of people and the environment.

(q) "EH&S Administrative Laws and Regulations List" means a list of laws, regulations, and other legally mandated requirements resulting from the Jefferson Lab Directives Review Process that do not serve to directly protect a person or the environment from a hazard but addresses record keeping, reporting requirements, plans, etc., that are considered administrative and managerial in nature.

(r) “Contractor’s EH&S Manual” is one of the Contractor’s means of implementing laws, regulations and other requirements agreed to during the Necessary and Sufficient process and the Directives Review Process as applicable to the Jefferson Lab.

(s) "Standard" means a written law, regulation, national consensus standard, internal standard or DOE Directive requirement that provides a rule or measure that is recognized as an acceptable method to either protect a person or the environment from hazards or provide further assurance of an agreed to level of protection of people and the environment.

CLAUSE H.2 - LABORATORY FACILITIES

Laboratory Facilities. DOE agrees to continue to furnish and make available to the Contractor, for its possession and use in performing the work under this contract, the Laboratory facilities designated as follows:

(a) The Government-owned or leased land, buildings, utilities, equipment and other facilities situated at the Laboratory site in Newport News, Virginia;

(b) Government-owned or leased facilities at such other locations as may be approved by DOE for use under this contract.

DOE reserves the right to make part of the above-mentioned land or facilities available to other Government agencies or other users on the basis that the responsibilities and undertakings of the Contractor will not be unreasonably interfered with. Before exercising its right to make any part of the land or facilities available to another agency or user, DOE will confer with the Contractor.

Subject to mutual agreement, other facilities may be used in the performance of the work under this contract.

CLAUSE H.3 - COMMUNICATIONS AND TRUST

(a) Public Affairs and News Releases

(1) The Parties agree that each has an obligation and commitment to academic freedom and openness in public information, inquiry and involvement. The Parties also recognize the importance of coordination with each other with regard to areas covered in this Clause so as to achieve public policy objectives important to the nation. As a federal agency, DOE must assure that news releases which describe its policies and procedures as related to the operation of its national scientific laboratories do so on an accurate and timely basis. Accordingly, the Parties recognize the importance of advanced coordination of major news media activities, including new releases, major announcements and significant interactions with national news media.

(2) Consistent with these principles, the Parties will exercise diligent efforts to inform each other, in advance, of significant public affairs events or other major activities. When such advance exchange is not possible operationally, each party shall promptly furnish the released information to the other party concurrent with its release.

(3) The Contractor shall not release information attributed directly to DOE or which purports to represent established DOE policy without advance concurrence of DOE. Nothing in this Article shall be construed so as to limit the right of the Contractor to publicize the results of its scientific research, consistent with the advance coordination principles outlined above.

(4) In all public releases of information in communication products related to the Laboratory, identification of the facility as a Department of Energy facility shall be made prominently in the communication product involved. The inclusion of such a standard statement does not replace, however, the requirement for prominent identification of the Laboratory as a DOE facility in an appropriate editorial context in the communications product.

(5) Nothing in this Clause is intended to interfere with requirements associated with information, which has received national security classification.

(b) Public Involvement

(1) The Contractor agrees to establish community relations and/or public involvement programs and initiatives appropriate to the Laboratory activities involved and the stakeholder interests affected.

(2) DOE recognizes such activities as an integral component of Contractor management responsibilities in the execution of the contract. The Parties recognize their mutual responsibilities to coordinate public involvement activities and to coordinate all related external communications consistent with

the principles outlined in paragraph (a), Public Affairs and News Releases, above.

(3) In carrying out Laboratory public involvement activities, the Contractor agrees that it will make no statements contrary to DOE policy or enter into any commitments with external parties regarding departmental actions without DOE concurrence.

CLAUSE H.4 - LONG-RANGE PLANNING, PROGRAM DEVELOPMENT AND BUDGETARY ADMINISTRATION

(a) Basic Considerations. Throughout the process of planning, and budget development and approval, the Parties recognize the desirability for close consultation, for advising each other of plans or developments on which subsequent action will be required, and for attempting to reach mutual understanding in advance of the time that action needs to be taken.

(b) Institutional Planning. It is the intent of the Parties to develop annually an Institutional Plan covering a five-year period. Development of the Institutional Plan is the strategic planning process by which the Parties, through mutual consultation, reach agreement on the general types and levels of activity which will be conducted at the Laboratory for the period covered by the plan. The Institutional Plan approved by DOE provides guidance to the Laboratory for long-range planning of programs, site and facility development, and for budget preparation. It also serves as a baseline for placement of work at the Laboratory.

(c) Work Authorization and Financing

In accordance with the basic principles stated in paragraph (a) of this Clause, DOE approval of the program proposals and budget estimates will be reflected in work authorizations and financial plans developed and issued to the contractor before work can commence.

CLAUSE H.5 - WORK FOR OTHERS FUNDING AUTHORIZATION

Any uncollectible receivables resulting from the Contractor utilizing Contractor corporate funding for reimbursable work shall be the responsibility of the Contractor, and the United States Government shall have no liability to the Contractor therefor. The Contractor is permitted to provide advance payment utilizing contractor corporate funds for reimbursable work to be performed by the Contractor for a non-Federal entity in instances where advance payment from that entity is required under the Laws, Regulations, and DOE Directives clause of this contract and such advance cannot be obtained. The Contractor is also permitted to

provide advance payment utilizing Contractor corporate funds to continue reimbursable work to be performed by the Contractor for a Federal entity when the term or the funds on a Federal interagency agreement required under the Laws, Regulations, and DOE Directives clause of this contract have elapsed. The Contractor's utilization of Contractor corporate funds does not relieve the Contractor of its responsibility to comply with all requirements for Work for Others applicable to this contract.

CLAUSE H.6 - DEAR 970.70 AGREEMENTS TO PERFORM NON-DOE ACTIVITIES

(a) Subject to the prior written approval of the Contracting Officer, and in compliance with applicable requirements imposed by the Contracting Officer pursuant to clause I.110 - Laws, Regulations, and DOE Directives, the Contractor may, through the Laboratory, perform non-DOE activities which are consistent with and complementary to the DOE's mission and the Laboratory's mission under the contract, involving the use of Laboratory equipment, facilities, or personnel. Such proposed work may be for non-Federal entities or other Federal agencies. The request for such approval shall set forth, in detail, the nature of the outside work to be performed, the Laboratory equipment, facilities or personnel required, and the financial and contractual arrangements proposed to pay for the cost of such work. The Contracting Officer shall consider such a request, being guided, among other factors, by the current or future needs of DOE's programs for the equipment, facilities, or personnel to be utilized in the performance of such outside work. Primary considerations in approving such work are that the proposed work will not place the Laboratory in direct competition with domestic private sector, will not adversely impact execution of the Laboratory's assigned programs, and will not create a potentially detrimental future burden on commitment of DOE resources. If the Contracting Officer approves such a request, the Contractor and DOE shall agree upon the terms and conditions which would apply to such work. This agreement may provide for receipt by the Government of all or part of such sum as represents the payment to be received by the Contractor for such outside work; provided, however, that DOE may contribute the use of certain equipment, facilities, or personnel to the Laboratory for the performance of such outside work if it determines that it desires to foster the activity in some measure. Except as otherwise approved by DOE, all clauses of this contract shall be deemed to be applicable to the performance of such work. This Clause shall not be construed as amending or superseding the requirements of clause C.1, Statement of Work, set forth in Part I, Section C.

(b) The Contractor shall promptly advise the Contracting Officer of any advance notices of, or solicitations for, a major system acquisition requirement received from other Federal agencies pursuant to FAR 34.005 which would logically involve DOE facilities or resources operated or managed by the Contractor. The Contractor shall not respond to or otherwise propose to participate in response to the requirements of such solicitations unless the Contractor has obtained written approval of the Contracting Officer.

CLAUSE H.7 - CARE OF LABORATORY ANIMALS

(a) Before undertaking performance of any contract involving the use of laboratory animals, the Contractor shall register with the Secretary of Agriculture of the United States in accordance with Section 6, Public Law 89-544, Laboratory Animal Welfare Act, August 24, 1966, as amended. The Contractor shall furnish evidence of such registration to the Contracting Officer.

(b) The Contractor shall acquire animals used in research and development programs from a dealer licensed by the Secretary of Agriculture, or from exempted sources in accordance with the Public Laws enumerated in paragraph (a) above.

(c) In the care of any animals used or intended for use in the performance of this contract, the Contractor shall comply with USDA regulations governing animal care and usage, as well as all other relevant local, State, and Federal regulations concerning animal care and usage. In addition, the Contractor will ensure that research will be conducted in a facility that either: (i) has a current National Institutes of Health (NIH) assurance number for animal care and usage, or (ii) is currently accredited for animal care and usage by an appropriate organization such as the American Association for Accreditation of Laboratory Animal Care, Inc. (AAALAC), or (iii) has a DOE Assurance Plan Number.

CLAUSE H.8 - PROTECTION OF HUMAN SUBJECTS

Before undertaking the performance of any research involving the use of human subjects, the provisions of 10 CFR 745, Federal Policy for the Protection of Human Subjects, must be complied with. This requirement applies to research undertaken with DOE support, work for others, and collaborations with other institutions.

CLAUSE H.9 – EQUAL OPPORTUNITY PRE-AWARD CLEARANCE OF SUBCONTRACTS

Nothwithstanding the clause I.85 of this contract entitled “Contractor Purchasing System,” the Contractor shall not enter into a first-tier subcontract for an estimated or actual amount of $10 million or more without obtaining in writing from the Contracting Officer a clearance that the proposed subcontractor is in compliance with equal opportunity requirements and therefore is eligible for award.

CLAUSE H.10 - ADDITIONAL ITEMS OF ALLOWABLE AND UNALLOWABLE COSTS

ITEMS OF ALLOWABLE COSTS:

(a) Subject to the approval or ratification, in writing, of the Contracting Officer, litigation expenses (including reasonable counsel fees and the premium for bail bond) necessary to defend adequately any member of the Contractor's internal guard force against whom a civil or criminal action is brought, where such action is based upon lawful act or acts of the guard undertaken by him in the general course of his duties for the purpose of accomplishing and fulfilling the official duties of his employment.

(b) Rentals and leases of land, buildings, and equipment owned by third parties, allowances in lieu of rental, charges associated therewith and costs of alteration, remodeling and restorations where such items are used in the performance of the contract, except that such rentals and leases directly chargeable to the contract shall be subject to such approval by the Contracting Officer as set forth in Part III, Attachment J.7, Appendix G.

(c) Stipends and payments made to reimburse travel or other expenses of researchers and students who are not employed under this contract but are participating in research, educational or training activities under this contract to the extent such costs are incurred in connection with fellowship, international agreements, or other research, educational or training programs approved by the Contracting Officer.

(d) Payments to educational institutions for tuition and fees or institutional allowances in connection with fellowship or other research, educational or training programs.

(e) Cost incurred or expenditures made by the contractor, as directed, approved or ratified by the Contracting Officer and not allowable under any other provisions of this contract.

ITEMS OF UNALLOWABLE COSTS:

(a) Premium Pay for wearing radiation-measuring devices for Laboratory and all-tier cost-type subcontract employees.

(b) Costs incurred in connection with any employee action as provided in the clause H.12 entitled “Costs Associated with Whistleblower Actions.”

CLAUSE H.11 - RESERVED

CLAUSE H.12 - COSTS ASSOCIATED WITH WHISTLEBLOWER ACTIONS

(a) Definitions.

(1) “Adverse determination” means

(i) A recommended decision under 29 CFR part 24 by an administrative law judge that the Contractor has violated the employee protection

provisions of the statutes for which the Secretary of Labor has been assigned responsibility;

(ii) An initial agency decision under 10 CFR 708.10, that the Contractor has engaged in conduct prohibited by 10 CFR 708.5; or

(iii) A decision against the Contractor by the Secretary under 41 U.S.C. 265(c)(1)

(iv) A judgment or other determination of liability against the Contractor and in favor of the employee in an action in a judicial forum.

(2) "Costs" include any costs or expenses relating to an employee action, as defined below, including but not limited to back pay, damages or other award in the form of relief to the employee; administrative and clerical expenses; the cost of legal services, including litigation costs, whether provided by the Contractor or procured from outside sources; the costs of services of accountants, consultants or other experts retained by the Contractor; all elements of related compensation, costs and expenses of employees, officers and directors; and any similar costs incurred after the commencement of the employee action.

(3) "Employee action" means an action brought by an employee of the Contractor under 29 CFR part 24, 10 CFR part 708, or 41 U.S.C. 265, or an action filed in federal or state court for redress of discrimination or discriminatory action by a Contractor based on activities that would be actionable under 29 CFR part 24, 10 CFR part 708, or 41 U.S.C. 265.

(4) "Litigation costs" include attorney, consultant and expert witness fees associated with the defense of an employee action, but exclude the costs of implementing a settlement, judgment, or Secretarial Order.

(b) Segregation of costs. All litigation costs incurred in the investigation and defense of an employee action under this clause shall be differentiated and accounted for by the Contractor so as to be separately identifiable. If the Contracting Officer provisionally disallows such costs, then the Contractor may not use funds advanced by DOE under the contract to finance the litigation.

(c) Allowability of litigation and other costs.

(1) Litigation costs, including the use of alternative dispute resolution, and settlement costs incurred in connection with an employee action under this clause are allowable if the employee action is resolved prior to an adverse determination, provided such costs are otherwise allowable under the clauses entitled "Insurance-Litigation and Claims," "Cost Prohibitions Related to Legal and Other Proceeding," and other relevant provisions of this contract.

(2) In actions in which an adverse determination is issued, litigation, settlement, and judgment costs, as well as the cost of complying with any Secretarial Order, are not allowable, unless:

(i) The Contractor prevails in a proceeding subsequent to the adverse determination at which a final decision is rendered in the action; or

(ii) The Contracting Officer has, on the basis that it is in the best interest of the Government, approved the Contractor's request to proceed with defense of an action rather than entering into a settlement with the employee or accepting an adverse determination or other interim decision prior to a final decision.

(3) Subsequent to an adverse determination, litigation costs, as well as costs associated with any interim relief granted, may not be paid from contract funds; provided, however, that the Contracting Officer may, in appropriate circumstances, provide for conditional payment from contract funds upon provision of adequate security, or other adequate assurance, and agreements by the Contractor to repay all litigation costs, plus interest, if they are subsequently determined to be unallowable.

(4) Litigation costs incurred to defend an appeal by the employee from an interim or final decision in the Contractor's favor are allowable provided they are otherwise allowable under the clauses entitled "Insurance Litigation and Claims" and "Cost Prohibitions Related to Legal and Other Proceedings," and other relevant provisions of the contract.

(d) The provisions of this clause shall not apply to the defense of suits by employees or ex-employees of the Contractor under section 2 of the Major Fraud Act of 1988 as amended. (See the clause entitled "Cost Prohibitions Related to Legal and Other Proceedings.")

CLAUSE H.13 - LIABILITY WITH RESPECT TO COST ACCOUNTING STANDARDS

(a) The Contractor is not liable to the Government for increased costs or interest resulting from its failure to comply with the Clauses of this contract entitled, "Cost Accounting Standards", and "Administration of Cost Accounting Standards", if its failure to comply with the clauses is caused by the Contractor's compliance with published DOE financial management policies and procedures or other requirements established by the Department's Chief Financial Officer or Procurement Executive.

(b) The Contractor is not liable to the Government for increased costs or interest resulting from its subcontractors' failure to comply with the clauses at FAR 52.230-2, "Cost Accounting Standards," and FAR 52.230-6, "Administration of Cost Accounting Standards," if the Contractor includes in each covered subcontract a clause making the

subcontractor liable to the Government for increased costs or interest resulting from the subcontractor's failure to comply with the clauses; and the Contractor seeks the subcontract price adjustment and cooperates with the Government in the Government's attempts to recover from the subcontractor.

CLAUSE H.14 - PROCEDURE TO DISALLOW COSTS

(a) General. The Parties agree that this contract is a Government advanced funded cost-type contract. If either party believes that funds have been used to pay for costs which are unallowable under this contract, the following procedure will be invoked.

(b) The party which initially identifies a cost of questionable allowability will inform the other party of the issue. The Contractor and the Contracting Officer shall make every reasonable effort to reach a satisfactory settlement. If the Parties are unable to reach a settlement, the Contracting Officer will issue a written notice in accordance with clause I.47, Notice of Intent to Disallow Costs.

(c) If the Contracting Officer issues a written decision pursuant to clause I.47 (a)(2), this decision will be considered a final decision for the purposes of clause I.44, Disputes. Within thirty (30) days after receipt of this decision, the Contractor will make payment of the amount set forth in the decision. Payment shall be made by check or other appropriate mechanism as approved by the Contracting Officer. Payment by the Contractor shall not waive or otherwise preclude its right to appeal or file suit pursuant to the Contract Disputes Act of 1978, as amended (41 U.S.C. 601-613).

CLAUSE H.15 - FINANCIAL MANAGEMENT SYSTEM

The Contractor shall maintain and administer a financial management system that is suitable to provide proper accounting in accordance with DOE requirements for assets, liabilities, collections accruing to the Contractor in connection with the work under this contract, expenditures, costs, and encumbrances; permits the preparation of accounts and accurate, reliable financial and statistical reports; and assures that accountability for the assets can be maintained. The Contractor shall submit to DOE for written approval a plan for new financial management systems and/or subsystems and major enhancements and/or upgrades to the currently existing financial systems and/or subsystems. The Contractor shall notify DOE thirty (30) days in advance of any planned implementation of any substantial deviation from this plan and, as requested by the Contracting Officer, shall submit any such deviation to DOE for written approval before implementation.

CLAUSE H.16 – COST MANAGEMENT REPORTS

So long as SURA remains a non-integrated contractor, SURA's financial management system shall be linked to DOE's accounts through the use of the U. S. Department of Energy Cost Management Report (DOE form 533M) which shall be provided to the Contracting Officer on a monthly basis and fiscal year basis in accordance with the requirements imposed by the Contracting Officer pursuant to Clause 110, *Laws, Regulations, and DOE Directives*.

CLAUSE H.17 - PRIVACY ACT RECORDS

In accordance with the Privacy Act of 1974, 5 U.S.C. 552a (Public Law 93-579) and implementing DOE Regulations (10 CFR 1008 Chapter III, Part 708), the Contractor shall maintain the following "Systems of Records" on individuals in order to accomplish the United States Department of Energy functions:

(a) "Personnel Records of Former Contractor Employees" (DOE-5)

(b) "Personnel Medical Records" (DOE-33).

(c) "Personnel Radiation Exposure Records" (DOE-35).

(d) "Occupational & Industrial Accident Records" (DOE-38)

(e) "Labor Standards Complaints and Grievances" (DOE-39)

(f) "Contractor Employee Insurance Claims" (DOE-40)

The parenthetical Department of Energy number designations for each system of records refers to the official "System of Records" number published by the United States Department of Energy in the Federal Register pursuant to the Privacy Act.

CLAUSE H.18 - PATENT INDEMNITY SUBCONTRACTS

Except as otherwise authorized by the Contracting Officer, the Contractor shall obtain indemnification of the Government and its officers, agents, and employees against liability, including costs, for infringement of U.S. Letters Patent (except Letters Patent issued upon an application which is now or may hereafter be kept secret or otherwise withheld from issue by order of the Government) from Contractor's subcontractors for any contract work subcontracted on the terms and in accordance with the Federal Acquisition Regulations as may be supplemented by the Department of Energy Acquisition Regulations.

CLAUSE H.19 - AUTHORIZATION AND CONSENT IN COPYRIGHT

In the case of suit or potential suit in copyrighted infringement, the Contractor may request authorization and consent in copyright from DOE. Programmatic necessity shall be a major consideration in grant of authorization and consent.

CLAUSE H.20 - ROYALTY INFORMATION DURING TERM OF CONTRACT

(a) Cost of charges for royalties.

If any royalty payments are directly involved in the contract or will be charged to the Government as costs under the contract, the Contractor agrees to report to the Contracting Officer the following information relating to each separate item of royalty or license fee:

(1) Name and address of licensor.

(2) Date of license agreement.

(3) Patent numbers, patent application serial numbers, or other basis on which the royalty is payable.

(4) Brief description, including any part or model numbers of each contract item or component on which the royalty is payable.

(5) Percentage or dollar rate of royalty per unit.

(6) Unit price of contract item.

(7) Number of units.

(8) Total dollar amount of royalties.

(b) Copies of current licenses. In addition, if specifically requested by the Contracting Officer, the Contractor shall furnish a copy of the current license agreement and an identification of applicable claims of specific patents or other basis upon which the royalty is payable.

(c) The Contractor shall follow the procedures of 48 CFR 27.204 and 48 CFR 927.206 in all subcontracting.

CLAUSE H.21 – RESERVED

CLAUSE H.22 – RESERVED

CLAUSE H.23 - OTHER PATENT RELATED MATTERS [THIS CLAUSE APPLIES TO PRIVATELY FUNDED TECHNOLOGY AS DEFINED IN CLAUSE I.96 - TECHNOLOGY TRANSFER MISSION (b)(9)]

(a) Transfer of Patent Rights to a Successor Contractor.

At the termination or expiration of this contract, the following terms and conditions shall apply to subject inventions which were elected and prosecuted under privately funded technology transfer, licenses and royalties generated therefrom:

(1) For any license executed prior to termination or expiration of this contract for a subject invention, the distribution of net royalties or income therefrom shall remain as prior to contract termination or expiration and shall continue for the duration of such license. The percentage of such royalties or income being used at the Facility shall go to the successor Contractor at the Facility for use at the Facility pursuant to its contract or, in the absence of a successor Contractor, to such other entity designated by the Government.

(2) For any assignment executed to a party other than an affiliate of the Contractor prior to termination or expiration of this contract for a subject invention, the distribution of net royalties or income therefrom shall remain as prior to contract termination or expiration and shall continue for the duration of such assignment. The percentage of such royalties or income being used at the Facility shall go to the successor Contractor at the Facility for use at the Facility pursuant to its contract or, in the absence of a successor Contractor, to such other entity designated by the Government.

(3) Where title to a subject invention has been retained by the Contractor or an affiliate of the Contractor, the Contractor and Government shall enter negotiations prior to such termination or expiration with respect to retention of title to the invention by the Contractor or its affiliate or transfer of such title to DOE or the successor Contractor operator of the Facility. Such negotiations shall consider the equities of the Parties with respect to each subject invention and shall take into consideration the presence of private investment, potential commercial use, assumption of patent related liabilities, effective technology transfer and the need to market the technology. Regardless of whether such negotiations are completed, the Government shall have the right to require the transfer of any such title to any subject invention to which title has been retained by the Contractor or an affiliate and the Parties shall thereafter complete negotiations regarding appropriate compensation.

(4) Where title to a subject invention is to be retained by the Contractor or its affiliate subsequent to termination or expiration of the contract, the Contractor and the Government shall enter negotiations prior to such termination or expiration with respect to net royalties or income generated from assignments

or licenses of such inventions effected subsequent to termination or expiration of the contract and the distribution thereof between the Contractor and successor Contractor at the Facility for use at the Facility pursuant to its contract, or, in the absence of a successor Contractor, to such other entity designated by the Government. Such negotiations shall consider the equities of the Parties and other conditions as set forth in paragraph (3) above. However, the net royalty or income distribution to the Facility for use by a successor Contractor or other Government designated entity shall in no event be less than twenty-five percent (25%) of such net royalties or income.

(b) Costs

(1) Except as otherwise specified in clause I.96 -Technology Transfer Mission - Alternate I, as allowable costs for conducting activities pursuant to the provisions of that Article, no costs are allowable as direct or indirect costs for the preparation, filing or prosecution of patent applications or the payment of maintenance fees or licensing and marketing costs, including costs relating to litigation or other adverse claims, where the Contractor elects to retain title.

(2) To the extent that the Contractor utilizes private Contractor funds for invention costs set forth in the clause H.21 - P.L. 98-620 Patent Rights (Special), paragraph (k)(3), the annualized net royalties or income being returned to the Facility for use at the Facility, resulting from licensing inventions for which all invention costs were covered by private Contractor funds, being returned to the Facility for use at the Facility shall in no event be less than fifty-one percent (51%) of the balance of royalties or income earned.

(c) Liability of the Government.

In situations involving privately funded technology transfer activities, the Contractor shall include in all license agreements and in any assignment the following clause unless otherwise approved or directed by the Contracting Officer following consultation with DOE Patent Counsel:

"This license (assignment) is entered into by the Licensor, independent from its prime contract with the Department of Energy. The Licensor is acting independently from the Government and in its own private capacity and is not acting on behalf of the U.S. Government, nor as its Contractor nor its agent. Correspondingly, it is understood and agreed that the U.S. Government is not a party to this license and in no manner whatsoever shall be liable for nor assume any responsibility or obligation for any claim, cost or damage arising out of or resulting from this license agreement, the subject matter licensed, or any action or lack thereof by the Licensor or Licensee with respect thereto."

Further, the Contractor shall not include in any license agreement or assignment any guarantee or requirement which would obligate the Government to pay any costs or create any liability on behalf of the Government.

CLAUSE H.24 - INTER-CONTRACTOR PURCHASES

Inter-Contractor purchases, as defined in Acquisition Letter 98-03, paragraph III, shall conform to the principles contained in paragraphs IV.A.1-3, and 5 of Acquisition Letter 98-03.

CLAUSE H.25 - DEAR 970.2210 SERVICE CONTRACT ACT OF 1965 (41 U.S.C. 351)

The Service Contract Act of 1965 is not applicable to this contract. However, subcontracts awarded by the Contractor are subject to the Act to the same extent and under the same conditions as contracts awarded by DOE. Accordingly, except as otherwise approved, in writing, by the Contracting Officer, the Contractor will insert the appropriate "Service Contract Act" article and applicable wage determinations in subcontracts the principal purpose of which is to furnish services through the use of service employees. The Contractor and the Contracting Officer shall develop a procedure whereby DOE will determine if the Service Contract Act is applicable to particular subcontracts.

CLAUSE H.26 - DEAR 970.2206 WALSH-HEALY PUBLIC CONTRACTS ACT

Except as otherwise may be approved, in writing, by the Contracting Officer, the Contractor agrees to insert the following provision in Purchase Orders and subcontracts under this contract. "If this contract is for the manufacture or furnishing of materials, supplies, articles, or equipment in an amount which exceeds or may exceed $10,000.00 and is otherwise subject to the Walsh-Healy Public Contracts Act, as amended (41 U.S. Code 35-45), there are hereby incorporated by reference all representations and stipulations required by said Act and regulations issued thereunder by the Secretary of Labor, such representations and stipulations being subject to all applicable rulings and interpretations of the Secretary of Labor which are now or may hereafter be in effect."

CLAUSE H.27 - INCORPORATION OF REVISED FAR AND DEAR CLAUSES AND DEPARTMENTAL POLICIES AND PROCEDURES

The Parties acknowledge that DOE continues to review DOE policies and procedures applicable to contracts for management and operation of Government-owned facilities. This review may result in further additions, deletions or revisions to existing contract clauses, or

other DOE regulations, or directives which are issued after the effective date of this Modification, and which could conflict with or supersede some aspects of this Modification. It is the intent of the Parties to modify this contract, as necessary, to incorporate these new or revised clauses, regulations, or directives.

CLAUSE H.28 - CONTRACTOR'S RIGHT TO TERMINATE

(a) The Contractor shall have a right to terminate this contract when the contractor's liability, defined as the cost the contractor actually incurs as a result of certain obligations it has assumed under the contract, exceeds fifty percent of the total of the fixed SURA Central Office expenses (defined in Clause H.29) and the fixed fee (defined in Clause I.78(b)) paid to the contractor each fiscal year. Solely for purposes of this provision, the contractor's liability shall only apply to the obligations the contractor has assumed pursuant to:

- Clause H.12;
- Clause I.78(e)(12);
- Clause I.84 (f)
- Clause I.91 (h)(3);
- Clause I.91 (j)(2), except for punitive damages resulting from the willful misconduct, or lack of good faith of the Contractor's managerial personnel as defined in Clause H.1 (d);
- Clause I.106;

and shall apply on a cumulative, per fiscal year basis.

(b) Termination of the contract shall be effected by delivery of written notice of termination, which shall specify a period of twenty-four (24) months for termination to take place. The contractor shall continue to perform the work as required by the terms of this contract during the twenty-four (24) month period.

(c) If the Contractor terminates this contract, the provisions of Clause I.100, "Termination" regarding a termination settlement, shall be at the expense of the Contractor.

CLAUSE H.29 – SURA CENTRAL OFFICE EXPENSES

The allowable costs reimbursed under Clause I.78 "Allowable Cost and Fixed Fee" of this contract shall include cost incurred by the SURA Central Office and shall be determined as follows:

Reimbursement of SURA's Central Office Expenses shall be based upon the principles contained in OMB Circular A-122. SURA shall prepare and submit a

detailed cost proposal for the Department of Energy's Contracting Officer review. SURA will certify that the cost proposal contains no unallowable costs. The proposal will be submitted no later than 60 days prior to the beginning of each year of the contract and will identify the estimated allocable portion of SURA's Central Office Expenses. After review of the detailed proposal, the Parties shall negotiate a pre-determined fixed amount for that year's Central Office Expenses. Within 120 days after the end of each year of the contract, SURA shall submit for review a report identifying the actual allowable incurred costs to the Department of Energy in such form and detail as required by the Contracting Officer. Any difference between the pre-determined amount and the actual costs will be used to adjust the next year's or in the case of the last year of the contract, the final year's pre-determined amount. SURA's allowable costs for Central Office Expenses shall be paid to the Contractor in equal monthly installments, at the end of each month. The pre-determined fixed amount will be subject to appropriate adjustment if the Contract is terminated pursuant to Clause I.100 "Termination."

2. A schedule of the negotiated central office expenses is as follows:

Fiscal Year	Central Office Expenses
11/01/1999 - 9/30/2000	$1,515,834
10/01/2000 - 9/30/2001	TBD
10/01/2001 - 9/30/2002	TBD
10/01/2002 - 9/30/2003	TBD
10/01/2003 - 9/30/2004	TBD

CLAUSE H.30 - ENVIRONMENTAL CERTIFICATIONS

In connection with environmental permit applications and other environmental documentation required to be submitted by DOE to local jurisdictions, agencies of the Commonwealth of Virginia, or the United States Environmental Protection Agency with respect to Jefferson Lab, a DOE official is often required by law and/or regulation to certify that the information set forth in a particular document is accurate and complete, and that specific protocols or standards were followed. However, the parties recognize that the information contained in such documents is generated for DOE by SURA, either directly or through subcontractors. Therefore, to assist the DOE official in making such certification, an appropriate SURA official shall confirm to DOE that in regard to documents prepared by SURA, the information contained in the particular document is accurate and complete and that any protocols required by the respective regulatory agencies have been observed. In regard to documents prepared by subcontractors or others, SURA shall confirm that an appropriate SURA official has reviewed the document for accuracy and completeness and for the subcontractor's certification that protocols required by regulatory agencies have been observed.

CLAUSE H.31 - PERFORMANCE MEASURE REVIEW

(a) The Contractor and DOE agree to annually review the performance measures contained in Part III, Attachment J.2, Appendix B and to modify them upon the agreement of the parties; Provided, however, that if the parties cannot reach agreement on all the performance measures for the next period, the Contracting Officer shall have the unilateral right to establish new performance measures and/or to modify and/or delete existing performance measures, subject to the provisions of paragraph (b) below. It is expected that the performance measures will be modified by the Contractor and the DOE as new areas of emphasis of priorities emerge which the parties may agree warrant recognition in the performance based management system.

(b) In the event the Contracting Officer decides to exercise the unilateral right set forth in paragraph (a) above, he/she will notify the Contractor in writing of the intended decision and that a revision to Part III, Section J.2, Appendix B containing the revised performance measures will be issued to the Contractor within ten (10) working days. Provided, however, that the parties agree that the following resolution procedure will be available to the Contractor.

(1) Within five (5) working days of receipt of the notification that revised performance measures are to be imposed, a Corporate Officer of the Contractor may request that a Resolution Counsel (RC), consisting of a Corporate Officer of the Contractor, the Laboratory Director, the DOE Site Manager, and a representative of the Manager, Oak Ridge Operations Office, consider the Contractor's objections to those performance measures which are to be unilaterally imposed by the Contracting Officer. Said objections must be predicated on one of the following bases: (i) an insufficient specification of standards against which the Contractor's performance can be measured; or (ii) a standard of performance which (A) the Contractor cannot reasonably meet, including consideration of funding made available by DOE; (B) adversely affects the quality of the science or other elements of the mission; or (C) exposes the Contractor to unacceptable legal risks; or (D) conflicts with another performance measure. The RC shall have flexibility in determining the processes and procedures to be utilized and will take all steps necessary to act within twenty (20) working days, or such later period as the Manager of the Oak Ridge Operations Office or his designee, may authorize in writing, to effect informal resolution. The RC may utilize the expertise of knowledgeable staff personnel or other individuals whose participation will assist in the resolution of relevant issues.

(2) If the RC is unable to resolve the matter within the time frame established in subparagraph (b)(1), the Manager of the Oak Ridge Operations Office or his designee, shall, after joint consultation with the President of SURA and the Director of the Office of Science or their designees, issue a final determination set forth in a Decision Memorandum which shall constitute the final decision in the matter.

(c) Neither the decision of the Contracting Officer to exercise the unilateral right set forth in paragraph (a) above nor any decision of the Manager or his designee under paragraph (b) above, shall constitute a "claim" as defined in Clause I.44 Disputes, of this contract or the Contract Disputes Act of 1978, 41 U.S.C. §601 et seq.

CLAUSE H.32 - USE OF OBJECTIVE STANDARDS OF PERFORMANCE, SELF-ASSESSMENT AND PERFORMANCE EVALUATION

(a) The Contractor and DOE agree that the Contractor will utilize a performance based management system for Laboratory oversight. The performance based management system will include the use of clear and reasonable objective performance measures agreed to in advance as standards against which the Contractor's overall performance of scientific, technical, operational, administrative and/or managerial obligations under this contract will be assessed.

(b) The parties agree that the Contractor will conduct an on-going self-assessment process, including self-assessments performed at the Laboratory, as the principal means by which the Contractor will evaluate its compliance with the performance measures which are contained in Part III, Attachment J.2, Appendix B against which the Contractor's overall performance of obligations under the contract will be determined.

(c) Further, the Contractor and the DOE agree that the parties will utilize a specially designated process described in Part III, Attachment J.2, Appendix B, to evaluate the performance of the Laboratory. The DOE and the Contractor further agree that the evaluation process, described in Part III, Attachment J.2, Appendix B will be reviewed annually and modified, if necessary, by agreement of the parties.

(d) DOE, as a part of its responsibility for oversight, evaluation and information exchange, is responsible for providing programmatic and other appraisals and reviews of the Laboratory's and the Contractor's performance of authorized work in accordance with the terms and conditions of this contract.

(e) Annually, the Contracting Officer shall provide a written assessment of the Contractor's and Laboratory's performance hereunder to the Contractor which shall be based upon the DOE appraisal program and the Contracting Officer's evaluation of the Contractor's self-assessment. The Contracting Officer may also consider significant incidents or events that are within the control of the Contractor. For purposes of this clause, a significant event is one such as, but not limited to: (i) a major incident that exposes workers or the public to a hazard which exceeds regulatory limits or results from a regulatory violation; or (ii) worker or visitor fatality(ies). If any of these or other significant incidents or events occur, the Contracting Officer shall have a unilateral right to determine that the Contractor's overall performance, where appropriate, to be

unacceptable and accordingly, may override the existing evaluation process as set forth in Part III, Attachment J.2, Appendix B for the evaluation period.

(f) In the event the Contracting Officer decides to exercise the unilateral right set forth in paragraph (e) above, he/she will notify the Contractor in writing of his/her intended decision and that the Contracting Officer's Written Assessment will be issued to the Contractor within ten (10) working days. Provided, however, that the parties agree that the following resolution procedure will be available to the Contractor.

(1) Within five (5) working days of receipt of the notification that the Contracting Officer intends to override the Performance Evaluation Plan, a Corporate Officer of the Contractor may request that a Resolution Council (RC), consisting of a Corporate Officer of the Contractor, the Laboratory Director, the DOE Site Manager, and a representative of the Manager, Oak Ridge Operations Office, consider the Contractor's objections. The RC shall have flexibility in determining the processes and procedures to be utilized and will take all steps necessary to act within twenty (20) working days, or such later period as the Manager of the Oak Ridge Operations Office or his designee, may authorize in writing, to effect informal resolution. The RC may utilize the expertise of knowledgeable staff personnel or other individuals whose participation will assist in the resolution of relevant issues.

(2) If the RC is unable to resolve the matter within the time frame established in subparagraph (f)(1), the Manager of the Oak Ridge Operations Office or his designee, shall, after joint consultation with the President of SURA and the Director of the Office of Science or their designees, issue a final determination set forth in a Decision Memorandum which shall constitute the final decision in the matter.

(g) Neither the decision of the Contracting Officer to exercise the unilateral right set forth in paragraph (e) above nor any decision of the Manager or his designee under paragraph (f) above, shall constitute a "claim" as defined in Clause I.44, Disputes, of this contract or the Contract Disputes Act of 1978, 41 U.S.C. §601 et seq.

CLAUSE H.33 - CAP ON LIABILITY

(a) The parties have agreed that the Contractor's liability, for certain obligations it has assumed under this contract, shall be limited as set forth in paragraph (b) below. These limitations or caps shall only apply to obligations the Contractor has assumed pursuant to:

- Clause I.91 (h)(3)

- Clause I.91 (j)(2), except for punitive damages resulting from the willful misconduct, or lack of good faith of the Contractor's managerial personnel as defined in Clause H.1 (d)
- Clause H.12; and,
- Clause I.84 (f)(1)(i)(C)

and shall apply on a cumulative, per fiscal year basis. In addition, the Contracting Officer will determine which annual cap will apply based on the year in which the Contractor's act or failure to act was the proximate cause of the liability assumed by the Contractor pursuant to the provisions of the Clauses enumerated above. Provided, further, that in the event the Contractor's act or failure to act overlaps more than one year, then the individual caps for the years in question will be treated as a single cumulative cap. Finally, the cap set forth in paragraph (b) below shall only apply if the Contractor establishes that willful misconduct or lack of good faith on the part of its managerial personnel as defined in Clause H.1 (d) was not a contributing factor with regard to liabilities it has incurred under Clause I.91 (h)(3), Clause I.91 (j)(2) and Clause H.12.

(b) The liability cap for fiscal years 2000, 2001, 2002 and 2003 shall be set at fifty percent of the total of the fixed SURA Central Office expenses (defined in Clause H.29) and the fixed fee (defined in Clause I.78(b)) paid to the contractor each fiscal year. The liability cap for fiscal year 2004 will remain at the agreed to fiscal year 2003 amount. Except as otherwise provided in paragraph (a) above, and notwithstanding any other provision of this contract to the contrary, if the liability cap is reached for any fiscal year, the Contractor shall have no further responsibility for the costs of the liabilities it has assumed pursuant to:

- Clause I.91 (h)(3)
- Clause I.91 (j)(2), except for punitive damages resulting from the willful misconduct, or lack of good faith of the Contractor's managerial personnel as defined in Clause H.1 (d)
- Clause H.12; and,
- Clause I.84 (f)(1)(i)(C)

and all costs in excess of the liability cap for said liabilities shall be borne by the Government.

(c) The liability cap shall remain at the same rate as for the previous period until the next year's Central Office expenses has been established in accordance with Clause H.29.

CLAUSE H.34 - EXTERNAL REGULATION

The Parties commit to full cooperation with regard to complying with any statutory mandate regarding external regulation of Laboratory facilities, whether by the Nuclear Regulatory

Commission, the Occupational Safety and Health Administration, and/or State and local entities with regulatory oversight authority, and including but not limited to the conduct of pilot programs simulating external regulation, and the application for materials, facilities, or other licenses by or on behalf of the DOE.

CLAUSE H.35 - CONTRACTOR CONTRIBUTIONS

(a) A sublease agreement separate from this contract has been executed between DOE and SURA, covering the Virginia Associated Research Campus (VARC) building and the property adjacent thereto.

(b) The City of Newport News, Virginia has donated to SURA approximately 44.6 acres of land which SURA in turn conveyed to DOE in fee simple at no cost to the Government. The City also donated approximately 51.5 acres of land adjacent to the Government-owned site. SURA has, in turn, donated to DOE approximately 7.9 acres of land in fee simple free of charge.

(c) The Commonwealth of Virginia has appropriated funds for employees and certain other funds to SURA for Jefferson Lab. The Commonwealth of Virginia employees have been and will continue to be under SURA's supervision; however, the salaries and benefits of the said employees are not reimbursable under this contract, except for overtime and any proportionate fringe benefits associated with overtime paid to such employees by the Commonwealth of Virginia. Any such overtime for which SURA reimburses the Commonwealth of Virginia shall be properly authorized by SURA and the amount thereof shall be in accordance with established Commonwealth of Virginia compensation policies. SURA shall continue to utilize funds contributed by the Commonwealth for the benefit of SURA and consistent with the requirements of the Commonwealth.

(d) The Commonwealth of Virginia has also authorized SURA to expend a stated amount from the General Fund of the Commonwealth of Virginia as the Commonwealth's share in the development of certain technology transfer initiatives at Jefferson Lab. Expenditures of these and similar funds shall be made by SURA in accordance with an Accounting and Procurement Policies and Procedures document approved by SURA management, and the use of DOE rules and regulations which are designated for the expenditure of contract funds shall not be applicable to funds provided by the Commonwealth. SURA further agrees to: (1) Keep the Manager of the DOE Site Office advised of all key technical and management decisions of any project funded with Commonwealth of Virginia funds; and, (2) Hold the Department of Energy harmless for any cost associated with any agreement or subcontract solicitation, award or dispute when SURA intends to use Commonwealth of Virginia funds for any portion of the subject agreement or subcontract. "

(e) The contributions to SURA by the Commonwealth of Virginia in the form of personnel and funds are not accountable to the Government. However, SURA shall provide an

annual report to the Contracting Officer on the amount of funds appropriated by the Commonwealth and the general purpose for which such funds were used.

CLAUSE H.36 - ADVANCE UNDERSTANDING ON COSTS

(a) In paragraph (c) of Clause H.35, CONTRACTOR CONTRIBUTIONS it is recognized that the Commonwealth of Virginia may appropriate funds and assign personnel to the Contractor for Jefferson Lab. To the extent allowable under the terms of other provisions of this contract, the cost of supplies and services (office supplies and equipment, utilities, etc.) necessary for those employees of the Commonwealth to perform their duties is an allowable cost as long as their duties are consistent with the Commonwealth's intended contribution to the Contractor and their services are in support of the general purpose of this contract. To the extent allowable by other terms of this contract, the Contractor's costs in administering these funds and supervising these employees are allowable as long as the Contractor's efforts are consistent with the Commonwealth's intended Contractor contribution and the efforts are of benefit to Jefferson Lab.

(b) (1) The SURA/Jefferson Lab Residence Facility is maintained to provide reasonably priced and convenient temporary housing for researchers and graduate students while involved with research activities at Jefferson Lab, other individuals conducting Jefferson Lab related business with SURA or DOE, and family members of such individuals on a temporary basis while the individual is at Jefferson Lab. While SURA is the owner and operator of the Residence Facility, DOE/Jefferson Lab derives certain benefits from the Residence Facility; accordingly, some indirect DOE funded support to the Residence Facility is appropriate. This DOE funded support provided through the contract is incidental to the overall contract work. The paragraphs below address this support and distinguish between the DOE funded support provided under the contract and the SURA support which is provided apart from this contract.

(2) The DOE funded support shall be of an indirect nature and is defined as support through the use of existing DOE funded resources-- man-power, facilities, equipment. The DOE funded indirect support shall be from existing resources, and it shall not require the acquisition of additional resources (except as specifically set forth below).

Support from DOE is secondary and shall not interfere with other aspects of SURA's activities at Jefferson Lab. SURA's direct support is primary to the Residence Facility. Listed below are examples of the functions that are included in this indirect support from DOE resources and the direct support from SURA resources. While this list addresses the primary support roles, it is not an exhaustive list; but, it represents the type of expenses that are allowable.

Resolution of conflicting interpretations related to this list are addressed in paragraph (4) below.

(i) Personnel: Indirect support from DOE resources shall include recruitment, screening, selection, recordkeeping, compensation and benefits administration, performance appraisals, corrective actions, employee concerns and grievances, employee assistance, training, affirmative action, and equal employment opportunity compliance. Direct support from SURA resources for employees of the Residence Facility shall include the cost of salaries and benefits, costs associated with training not available from existing training programs at Jefferson Lab, and travel expenses. SURA employees in direct support of the Residence Facility are not considered SURA employees under the scope of this contract.

(ii) Finance: Indirect support from DOE funded resources shall include the use of existing financial systems, including systems for the payment of salaries and benefits of Residence Facility employees and the payment of SURA purchase orders with non-DOE funds; recordkeeping systems; and Automatic Data Processing (ADP) systems.

(iii) Procurement: Indirect support from DOE funded resources shall include the use of the SURA procurement system including the purchase of materials and supplies with non-DOE funds and the administration of those purchase agreements through delivery.

(iv) Security: Indirect support from DOE shall include routine surveillance of the Residence Facility with subcontract security personnel to respond to security related issues. SURA direct support includes any additional security personnel necessary for the Residence Facility.

(v) ADP Equipment: Indirect support from DOE shall include the use of ADP equipment by graduate students, post- doctoral research assistants, and visiting researchers to monitor experiments which are ongoing at Jefferson Lab while the visitors are at the Residence Facility. The acquisition of additional ADP equipment with DOE funds for this purpose is allowable, if acquired in accordance with established DOE procurement and ADP management requirements. SURA shall maintain and protect all Government property in accordance with Clause I.84, Property.

(vi) Utilities:

(a) Telecommunications: Indirect support from DOE funded resources shall include the use of the central system (trunk line). SURA shall reimburse to DOE the billed costs from the utility supplier of providing service to the Residence Facility, including proportional local service and actual long distance service.

(b) Water and Sewer: SURA shall reimburse DOE for metered water charges and proportional sewer charges.

(c) Electricity: SURA shall be directly responsible for electricity charges.

(vii) Environment, Health, and Safety: Indirect support from DOE funded resources shall include assistance with the preparation of environmental permits. SURA shall bear the cost of any direct expense for such permits or health and safety related equipment.

(viii) Miscellaneous: In addition to the above, there are a variety of functions that are of a less substantive nature. Examples of these are site development planning as related to the DOE/Jefferson Lab site; emergency maintenance and repair of the Residence Facility with reimbursement from SURA to DOE of any direct costs of repairs, e.g., overtime, repair parts; emergency medical care through the Medical Services Department; making of travel arrangements for guests at Jefferson Lab; and food services provided from the cafeteria contractor that do not negatively impact the overall operating cost of the cafeteria. SURA shall bear the expense of any remodeling, modifications, or routine maintenance to the Residence Facility.

(3) SURA personnel working under the contract, whose salary is paid with DOE funds, may be used in the day-to-day supervision of the SURA employees (non-DOE funded) operating the Residence Facility. This supervision shall be minimal in relation to their other responsibilities under this contract, shall not impact their other responsibilities related to the activities at Jefferson Lab, and shall not require additional DOE funded personnel.

(4) Any item of cost or support related to the Residence Facility (1) which is not addressed above either specifically or generally within the intent of this provision, (2) which is in question as to the reasonableness of the item, and/or (3) which requires a determination as to its allowability under this paragraph (b) of Clause H.36 only is final and is not subject to Clause I.44, Disputes.

(5) SURA agrees to maintain at least $10,000,000 of general liability insurance and property insurance at the replacement value of the facility at its own expense on

the Residence Facility, to name DOE as an insured under the insurance policies, and to provide evidence of such insurance to DOE on request.

CLAUSE H.37 - ENVIRONMENTAL PROTECTION, SAFETY AND HEALTH – WORK SMART STANDARDS

(a) The Contractor shall:

(1) Satisfy the applicable DOE Directives and DOE requirements which are summarized in Part III, Section J.5, Appendix E/List B to this contract and/or adopted employing the process specified in Clause I.110*, Laws, Regulations and DOE Directives*, paragraph (b). Where possible, the parties agree to use the same process deployed during the Necessary and Sufficient (later referred to in the Department as "Work Smart Standards) process prior to adding any prospective DOE ES&H Directive to Part III, Section J.5, Appendix E/List B. This process will ensure that the prospective ES&H Directive is not redundant with existing laws and regulations, adds net value and that it can not be replaced by appropriate Performance Measures.

(2) Comply with the "Necessary Standards" and the applicable portions of the "Sufficient External Standards" that are based on legal/regulatory requirements in the "Set." These standards are in lieu of the hazard based requirements in DOE ES&H directives that are based in regulation which otherwise would be applicable to performance of this contract under Clause I.110 entitled *Laws, Regulations and DOE Directives*. Omission of any applicable law or regulation from the "Set" does not affect the obligation of the contractor to comply with all requirements of law or regulation unless relief has been granted in writing by DOE or the appropriate regulatory agency. Furthermore, the parties agree that:

i) The "Necessary Standards" and the "Sufficient External Standards" in the "Set" will be listed in the contractor's ES&H Manual. Implementation of the "Necessary Standards" and the legally mandated "Sufficient External Standards" will be subject to review and audit by the Contracting Officer. However, the Contractor is only required to comply with the "Necessary Standards" and the applicable portions of the "Sufficient External Standards" that are based on legal/regulatory requirements.

ii) The Contractor's ES&H Manual used in the implementation of the "Sufficient External Standards" and the "Sufficient Internal Standards" that are not based on legal/regulatory requirements identified in the

"Set" will be subject to review and comment by the Contracting Officer concerning the sufficiency of protection.

iii) Substantive changes to the contractor's EH&S Manual will be subject to review and comment by the Contracting Officer prior to implementation of the change. The Contractor shall give the Contracting Officer as much advanced notice of such a proposed change as practicable, but in no case shall it be less than seven calendar days.

(3) Comply with the EH&S Administrative Laws and Regulations list from the DOE Directive review process. These standards are in lieu of "non-hazard based" DOE Order requirements in DOE ES&H directives that are based in law and regulation which otherwise would be applicable to performance of this contract under Clause I.110 entitled *Laws, Regulations and DOE Directives*. Omission of any applicable law or regulation from the EH&S Administrative Laws and Regulations list does not affect the obligation of the contractor to comply with all requirements of law or regulation unless relief has been granted in writing by DOE or the appropriate regulatory agency. Furthermore the parties agree that:

i) The EH&S Administrative Laws and Regulations list will be incorporated into the contractor's EH&S Manual subject to review and audit by the Contracting Officer.

ii) The contractor shall notify the Contracting Officer of changes to any standard in the EH&S Administrative Laws and Regulations list as a result of changes to the law and/or regulations.

iii) Substantive changes to the Contractor's EH&S Manual will be subject to review and comment by the Contracting Officer prior to implementation of the change. The Contractor shall give the Contracting Officer as much advanced notice of such a proposed change as practicable, but in no case shall it be less than seven calendar days.

(4) Research ES&H laws, regulations, and other legally mandated standards on an ongoing basis and, for changes therein, adjust contract performance to assure continuing compliance and to address any new hazards.

(5) Identify and inform the Contracting Officer, in writing, of any inconsistencies among these laws, regulations, directives and standards which would affect or preclude the Contractor's ability to perform its work, and bring such inconsistencies to the attention of the Contracting Officer.

(6) Continue to maintain adequate management systems that ensure that the DOE Directives and/or requirements specified in Part III, Section J.5, Appendix E/List B and the agreed-upon standards identified in the "Set" and the ES&H

Administrative Laws and Regulations list (Appendix E/List A) are implemented in accordance with Clause I.74 entitled *Integration of Environment, Safety, and Health into Work Planning and Execution*. The parties further agree that standards which are not required by law or regulation will be implemented in a graded approach, taking into account risks and costs and that the adequacy of implementation shall be judged by the process outlined in Part III, Section J.2, Appendix B/List B.

(7) Include appropriate consideration of such laws, regulations, directives and standards in planning activities performed under this contract.

(*8*) Assist DOE in its obligations toward fulfilling their NEPA responsibilities and ensure that all applicable requirements of the National Environmental Policy Act (NEPA) have been met and the required documentation is approved by the Contracting Officer prior to undertaking any applicable action.

(b) The Parties shall endeavor to keep apprised of changes to standards in the "Set." Subject to paragraphs (a)(4) and (f) of this Article, changes to any standard in the "Set" shall be addressed as follows:

(1) Subsequent changes to the contractor's EH&S Manual resulting from changes to the Set will be subject to review and comment by the Contracting Officer prior to implementation of the change.

(2) If the standard is a requirement applicable by law or regulation, the changed standard shall supersede the standard in the "Set" and become the new standard, effective immediately. The Contractor shall notify the Contracting Officer and the "Set" shall be modified accordingly.

(3) If the standard is not required by law or regulation, the Contractor may substitute the changed standard, with notice to the Contracting Officer if the change does not lower the agreed to level of protection.

(4) Any changes to the "Set" which decreases the level of ES&H protection agreed to during the Necessary and Sufficient process (or any intervening changes to the Set in accordance with paragraph [b] of this Clause) requires the approval of the Contracting Officer.

(5) In accordance with process outlined in Clause I.110 entitled *"Laws, Regulations, and DOE Directives,"* the Contracting Officer may revise Part III, Section J, Appendix E/List B and the Contractor agrees to modify the "Set" accordingly for any ES&H Directive.

(6) If a standard is not a requirement of a DOE Directive, the Contracting Officer may direct (i) substitution of a changed standard or (ii) modification of an internal standard, unless, within 30 days from receipt of notification of the

change from the Contracting Officer, the Contractor submits the matter to the Agreement Parties for a decision. If the Agreement Parties determine that the modified standard is necessary, the Contractor shall substitute the changed standard.

(c) Participate in a new Necessary and Sufficient Closure process upon a determination by either party that the existing "Set" is no longer complete or appropriate due to major changes in mission, activity, degree of hazard, performance expectation, or knowledge. Approval of any revised "Set" shall be by the Agreement Parties in accordance with the DOE Closure Process for Necessary and Sufficient Standards, with the exception that the external review may be omitted if the proposed changes are limited and non-controversial.

(d) As addressed in section (a)(3) of this Clause, the EH&S Administrative Laws and Regulations list will be listed in the contractor's EH&S Manual and implemented subject to the review and audit by the Contracting Officer. The Parties shall endeavor to keep apprised of changes to standards in the EH&S Administrative Laws and Regulations list. Subject to paragraphs (a)(4) and (f) of this Clause, changes to any standard in the EH&S Administrative Laws and Regulations list shall be addressed as follows:

(1) Subsequent changes to the contractor's EH&S Manual resulting from changes to the EH&S Administrative Laws and Regulations list will be subject to review and comment by the Contracting Officer prior to implementation of the change.

(2) If the standard is a requirement applicable by law or regulation, the changed standard shall supersede the standard in the EH&S Administrative Laws and Regulations list and become the new standard, effective immediately. The Contractor shall notify the Contracting Officer and the EH&S Administrative Laws and Regulations list shall be modified accordingly.

(e) The Contractor and the Contracting Officer shall identify and, if appropriate, agree to, any changes to contract terms and conditions, including cost and schedule, associated with a change to the "Set" or to a standard in the Set or a change to the EH&S Administrative Laws and Regulations list.

(f) The Contractor may at any time seek an exception, exemption, waiver, or variance from, or propose an equivalent alternative to, all or part of any standard in the "Set" or the EH&S Administrative Laws and Regulations list, and with respect to all or part of the activities under this contract, by submitting a request to the Contracting Officer. The Contracting Officer shall be responsible for taking any necessary and appropriate action to respond to any such request including seeking relief from any standard which is required by law.

(g) In the event that the Contractor determines it is unable to perform in accordance with the provisions of this clause, the Contractor shall so inform the Contracting Officer in writing and shall propose an action plan to remedy the problem. After receipt of

authorization from the Contracting Officer, the Contractor shall, within a reasonable time agreed upon by the parties, take the agreed upon actions and track them until closure. The Contracting Officer shall be notified when closure has been reached.

(h) The Contractor shall include in all of its subcontracts involving performance of work at the site, provisions requiring subcontractors to comply with the Contractor's Environment, Safety and Health Standards when such standards are mandated by law, regulation or the contract, plus such other requirements as may be necessary for the subcontractor to achieve a level of protection equal to or greater than the contractor's. However, such provisions in the subcontracts shall not relieve the Contractor of its obligation to assure compliance with the provisions of this clause for all aspects of the work.

(i) If at any time during the performance of the contract work, the Contractor's acts or failure to act may cause substantial harm or an imminent danger to safety and health of the worker or public, or to the environment, or the Contractor fails to take the corrective action approved in accordance with paragraph (f) above, the Contracting Officer may, without prejudice to any other legal or contractual rights of DOE, issue an order stopping all or any part of the work; thereafter, a start order for resumption of the work may be issued at the discretion of the Contracting Officer. The Contractor shall make no claim for an extension of time or adjustment of its fixed fee or damages by reason of, or in connection with, such work stoppage.

(j) For purposes of this Article, the term 'Agreement Parties' means the President, Southeastern Universities Research Association, Inc.; the Director, Office of High Energy and Nuclear Physics, Office of Science; and the Manager, DOE Site Office or their designees.

CLAUSE H.38 - PROPERTY PROTECTION FACILITY SECURITY

(a) Facility Importance Rating. DOE has officially determined Jefferson Lab's "facility importance rating" to be Class "PP" (Property Protection). [Reference DOE Order 470.1]

(b) Responsibility. It is the Contractor's duty to protect all DOE property and persons on site. The Contractor shall, in accordance with applicable DOE security regulations and requirements, be responsible for protecting Jefferson Lab against sabotage, loss and theft of property in the Contractor's possession in connection with the performance of work under this contract. The Contractor shall also be responsible for implementing DOE requirements as directed by the Contracting Officer and taking other actions that may be determined by DOE and the Contractor to be reasonable and necessary to protect the safety of the site population from terrorism or acts of violence.

(c) Regulations. The Contractor shall comply with all security regulations and requirements applicable to property protection facilities of DOE and for the administration of security clearances for Contractor personnel.

(d) Directives. The Contractor shall comply with all applicable DOE Directives specified in Part III, Section J.5 Appendix E/List B to this contract and/or imposed by the Contracting Officer pursuant to Clause I.110 entitled *Laws, Regulations, and DOE Directives*.

CLAUSE H.39 - CLASSIFIED RESEARCH AND INFORMATION

(a) It is the intent of both DOE and the Contractor that Jefferson Lab be a research facility whose primary purpose is to provide a state of the art physics laboratory that is user friendly to the national and international scientific community.

(b) It is mutually expected that the activities under this contract will not involve classified information. It is understood, however, that if in the opinion of either party, this expectation changes prior to the expiration or termination of all activities under this contract, said party shall notify the other party accordingly in writing without delay. The Contractor shall promptly inform the Contracting Officer in writing if and when classified information becomes involved or is expected to become involved in contract performance. The Contracting Officer shall assure that the Contractor is given appropriate instruction for the handling of the classified information. The Contractor agrees to safeguard the information in accordance with DOE's instruction and will transfer it as soon as practicable to the appropriate Government official.

(c) The Contractor shall not permit any individual to have access to classified information except in accordance with the Atomic Energy Act of 1954, as amended, Executive Order 12356, and DOE's requirements.

(d) Inasmuch, as Jefferson Lab creates a unique research capability for the United States, the possibility of conducting classified research exists. Therefore, the Jefferson Lab research facilities shall be available for classified work performed by the Government or its designee, excluding the Contractor, at its expense and pursuant to special security arrangements to be made by the Government.

CLAUSE H.40 - NOTICE REGARDING THE PURCHASE OF AMERICAN-MADE EQUIPMENT AND PRODUCTS - SENSE OF CONGRESS

It is the sense of the Congress that, to the greatest extent practicable, all equipment and products purchased with funds made available under this award should be American-made.

CLAUSE H.41 - LOBBYING RESTRICTION (ENERGY & WATER DEVELOPMENT APPROPRIATIONS ACT, 1999)

The Contractor or awardee agrees that none of the funds obligated on this award shall be expended, directly or indirectly, to influence congressional action on any legislation or appropriation matters pending before Congress, other than to communicate to Members of Congress as described in 18 U.S.C. 1913. This restriction is in addition to those prescribed elsewhere in statute and regulation.

PART II

SECTION I

CONTRACT CLAUSES

TABLE OF CONTENTS

CLAUSE NO.	FAR/DEAR REFERENCE	TITLE OF CLAUSE	PAGE NO.

CONTRACT CLAUSES

CLAUSE I.1 - DEAR 952.202-1 DEFINITIONS (OCT 1995)

(a) *Head of Agency* means the Secretary, Deputy Secretary or Under Secretary of the Department of Energy and the Chairman, Federal Energy Regulatory Commission.

(b) "Commercial component" means any component that is a commercial item.

(c) "Commercial item" means --

(1) Any item, other than real property, that is of a type customarily used for nongovernmental purposes and that --

(i) Has been sold, leased, or licensed to the general public; or

(ii) Has been offered for sale, lease, or license to the general public;

(2) Any item that evolved from an item described in paragraph (c)(1) of this clause through advances in technology or performance and that is not yet available in the commercial marketplace, but will be available in the commercial marketplace in time to satisfy the delivery requirements under a Government solicitation;

(3) Any item that would satisfy a criterion expressed in paragraphs (c)(1) or (c)(2) of this clause, but for --

(i) Modifications of a type customarily available in the commercial marketplace; or

(ii) Minor modifications of a type not customarily available in the commercial marketplace made to meet Federal Government requirements. "Minor" modifications means modifications that do not significantly alter the nongovernmental function or essential physical characteristics of an item or component, or change the purpose of a process. Factors to be considered in determining whether a modification is minor include the value and size of the modification and the comparative value and size of the final product. Dollar values and percentages may be used as guideposts, but are not conclusive evidence that a modification is minor;

(4) Any combination of items meeting the requirements of paragraphs (c)(1), (2), (3), or (5) of this clause that are of a type customarily combined and sold in combination to the general public;

(5) Installation services, maintenance services, repair services, training services, and other services if such services are procured for support of an item referred to in paragraphs (c)(1), (2), (3), or (4) of this clause, and if the source of such services --

(i) Offers such services to the general public and the Federal Government contemporaneously and under similar terms and conditions; and

(ii) Offers to use the same work force for providing the Federal Government with such services as the source uses for providing such services to the general public;

(6) Services of a type offered and sold competitively in substantial quantities in the commercial marketplace based on established catalog or market prices for specific tasks performed under standard commercial terms and conditions. This does not include services that are sold based on hourly rates without an established catalog or market price for a specific service performed;

(7) Any item, combination of items, or service referred to in subparagraphs (c)(1) through (c)(6), notwithstanding the fact that the item, combination of items, or service is transferred between or among separate divisions, subsidiaries, or affiliates of a Contractor; or

(8) A nondevelopmental item, if the procuring agency determines the item was developed exclusively at private expense and sold in substantial quantities, on a competitive basis, to multiple State and local Governments.

(d) "Component" means any item supplied to the Federal Government as part of an end item or of another component.

(e) "Nondevelopmental item" means --

(1) Any previously developed item of supply used exclusively for governmental purposes by a Federal agency, a State or local government, or a foreign government with which the United States has a mutual defense cooperation agreement;

(2) Any item described in paragraph (e)(1) of this definition that requires only minor modification or modifications of a type customarily available in the commercial marketplace in order to meet the requirements of the procuring department or agency; or

(3) Any item of supply being produced that does not meet the requirements of paragraph (e)(1) or (e)(2) solely because the item is not yet in use.

(f) "Contracting Officer" means a person with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings. The term includes certain authorized representatives of the Contracting Officer acting within the limits of their authority as delegated by the Contracting Officer.

(g) Except as otherwise provided in this contract, the term "subcontracts" includes, but is not limited to, purchase orders and changes and modifications to purchase orders under this contract.

(h) The term “DOE” means the Department of Energy and “FERC” means the Federal Energy Regulatory Commission.

CLAUSE I.2 - FAR 52.203-3 GRATUITIES (APR 1984)

(a) The right of the Contractor to proceed may be terminated by written notice if, after notice and hearing, the agency head or a designee determines that the Contractor, its agent, or another representative:

(1) Offered or gave a gratuity (e.g., an entertainment or gift) to an officer, official, or employee of the Government; and

(2) Intended, by the gratuity, to obtain a contract or favorable treatment under a contract.

(b) The facts supporting this determination may be reviewed by any court having lawful jurisdiction.

(c) If this contract is terminated under paragraph (a) above, the Government is entitled:

(1) To pursue the same remedies as in a breach of the contract; and

(2) In addition to any other damages provided by law, to exemplary damages of not less than three (3) nor more than ten (10) times the cost incurred by the Contractor in giving gratuities to the person concerned, as determined by the agency head or a designee. (This subparagraph (c)(2) is applicable only if this contract uses money appropriated to the Department of Defense.)

(d) The rights and remedies of the Government provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

CLAUSE I.3 - FAR 52.203-5 COVENANT AGAINST CONTINGENT FEES (APR 1984)

(a) The Contractor warrants that no person or agency has been employed or retained to solicit or obtain this contract upon an agreement or understanding for a contingent fee, except a bona fide employee or agency. For breach or violation of this warranty, the Government shall have the right to annul this contract without liability or, in its discretion, to deduct from the contract price or consideration, or otherwise recover, the full amount of the contingent fee.

(b) "Bona fide agency", as used in this clause, means an established commercial or selling agency, maintained by a Contractor for the purpose of securing business, that neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds itself out as being able to obtain any Government contract or contracts through improper influence.

"Bona fide employee", as used in this clause, means a person, employed by a Contractor and subject to the Contractor's supervision and control as to time, place, and manner of performance, who neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds out as being able to obtain any Government contract or contracts through improper influence.

"Contingent fee", as used in this clause, means any commission, percentage, brokerage, or other fee that is contingent upon the success that a person or concern has in securing a Government contract.

"Improper influence", as used in this clause, means any influence that induces or tends to induce a Government employee or officer to give consideration or to act regarding a Government contract on any basis other than the merits of the matter.

(c) Subcontracts and Purchase Orders. Unless otherwise authorized by the Contracting Officer, in writing, the Contractor shall cause provisions similar to the foregoing to be inserted in all subcontracts and purchase orders entered into under this contract.

CLAUSE I.4 - FAR 52.203-6 RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT (JUL 1995)

(a) Except as provided in paragraph (b) below, the Contractor shall not enter into any agreement with an actual or prospective subcontractor, nor otherwise act in any manner, which has or may have the effect of restricting sales by such subcontractors directly to the Government of any item or process (including computer software) made or furnished by the subcontractor under this contract or under any follow-on production contract.

(b) The prohibition in paragraph (a) above does not preclude the Contractor from asserting rights that are otherwise authorized by law or regulation.

(c) The Contractor agrees to incorporate the substance of this Clause, including this paragraph (c), in all subcontracts under this contract which exceed $100,000.

CLAUSE I.5 - FAR 52.203-7 ANTI-KICKBACK PROCEDURES (JUL 1995)

(a) Definitions.

(1) "Kickback," as used in this clause, means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind which is provided, directly or indirectly, to any prime Contractor, prime Contractor employee, subcontractor, or subcontractor employee for the purpose of improperly obtaining or rewarding favorable treatment in connection with a prime contract or in connection with a subcontract relating to a prime contract.

(2) "Person," as used in this clause, means a corporation, partnership, business association of any kind, trust, joint-stock company, or individual.

(3) "Prime Contract," as used in this clause, means a contract or contractual action entered into by the United States for the purpose of obtaining supplies, materials, equipment, or services of any kind.

(4) "Prime Contractor," as used in this clause, means a person who has entered into a prime contract with the United States.

(5) "Prime Contractor Employee," as used in this clause, means any officer, partner, employee, or agent of a prime Contractor.

(6) "Subcontract," as used in this clause, means a contract or contractual action entered into by a prime Contractor or subcontractor for the purpose of obtaining supplies, materials, equipment, or services of any kind under a prime contract.

(7) "Subcontractor," as used in this clause, (1) means any person, other than the prime Contractor, who offers to furnish or furnishes any supplies, materials, equipment, or services of any kind under a prime contract or a subcontract entered into in connection with such prime contract, and (2) includes any person who offers to furnish or furnishes general supplies to the prime Contractor or a higher-tier subcontractor.

(8) "Subcontractor Employee," as used in this clause, means any officer, partner, employee, or agent of a subcontractor.

(b) The Anti-Kickback Act of 1986 (41 U.S.C. 51-58) (the Act), prohibits any person from --

(1) Providing or attempting to provide or offering to provide any kickback;

(2) Soliciting, accepting, or attempting to accept any kickback; or

(3) Including, directly or indirectly, the amount of any kickback in the contract price charged by a prime Contractor to the United States or in the contract price charged by a subcontractor to a prime Contractor or higher-tier subcontractor.

(c) (1) The Contractor shall have in place and follow reasonable procedures designed to prevent and detect possible violations described in paragraph (b) of this clause in its own operations and direct business relationships.

(2) When the Contractor has reasonable grounds to believe that a violation described in paragraph (b) of this clause may have occurred, the Contractor shall promptly report, in writing, the possible violation. Such reports shall be made to the inspector general of the contracting agency, the head of the contracting agency if the agency does not have an inspector general, or the Department of Justice.

(3) The Contractor shall cooperate fully with any Federal agency investigating a possible violation described in paragraph (b) of this clause.

(4) The Contracting Officer may (i) offset the amount of the kickback against any monies owed by the United States under the prime contract and/or (ii) direct that the prime Contractor withhold from sums owed a subcontractor under the prime contract, the amount of the kickback. The Contracting Officer may order that monies withheld under subdivision (c)(4)(ii) of this clause be paid over to the Government unless the Government has already offset those monies under subdivision (c)(4)(i) of this Clause. In either case, the prime Contractor shall notify the Contracting Officer when the monies are withheld.

(5) The Contractor agrees to incorporate the substance of this clause, including subparagraph (c)(5) but excepting subparagraph (c)(1), in all subcontracts under this contract.

CLAUSE I.6 - FAR 52.203-8 CANCELLATION, RESCISSION, AND RECOVERY OF FUNDS FOR ILLEGAL OR IMPROPER ACTIVITY (JAN 1997)

(a) If the Government receives information that a Contractor or a person has engaged in conduct constituting a violation of subsection (a), (b), (c),or (d) of Section 27 of the Office of Federal Procurement Policy Act (41 U.S.C. 423) (the Act), as amended by Section 4304 of the National Defense Authorization Act for Fiscal Year 1996 (Pub.L. 104-106), the Government may --

(1) Cancel the solicitation, if the contract has not yet been awarded or issued; or

(2) Rescind the contract with respect to which --

(i) The Contractor or someone acting for the Contractor has been convicted for an offense where the conduct constitutes a violation of subsection 27 (a) or (b) of the Act for the purpose of either --

(A) Exchanging the information covered by such subsections for anything of value; or

(B) Obtaining or giving anyone a competitive advantage in the award of a Federal agency procurement contract; or

(ii) The head of the contracting activity has determined, based upon a preponderance of the evidence, that the Contractor or someone acting for the Contractor has engaged in conduct constituting an offense punishable under subsection 27 (e)(1) of the Act.

(b) If the Government rescinds the contract under paragraph (a) of this clause, the Government is entitled to recover, in addition to any penalty prescribed by law, the amount expended under the contract.

(c) The rights and remedies of the Government specified herein are not exclusive, and are in addition to any other rights and remedies provided by law, regulation, or under this contract.

CLAUSE I.7 - FAR 52.203-10 PRICE OR FEE ADJUSTMENT FOR ILLEGAL OR IMPROPER ACTIVITY (JAN 1997)

(a) The Government, at its election, may reduce the price of a fixed-price type contract and the total cost and fee under a cost-type contract by the amount of profit or fee determined as set forth in paragraph (b) of this clause if the head of the contracting activity or designee determines that there was a violation of Subsection 27(a), (b), or (c) of the Office of Federal Procurement Policy Act, as amended (41 U.S.C. 423), as implemented in Section 3.104 of the Federal Acquisition Regulation.

(b) The price or fee reduction referred to in paragraph (a) of this clause shall be --

(1) For cost-plus-fixed-fee contracts, the amount of the fee specified in the contract at the time of award;

(2) For cost-plus-incentive fee contracts, the target fee specified in the contract at the time of award, notwithstanding any minimum fee or "fee floor" specified in the contract;

(3) For cost-plus-award fee contracts --

(i) The base fee established in the contract at the time of contract award;

(ii) If no base fee is specified in the contract, 30 percent of the amount of each award fee otherwise payable to the Contractor for each award fee evaluation period or at each award fee determination point.

(4) For fixed-price-incentive contracts, the Government may --

(i) Reduce the contract target price and contract target profit both by an amount equal to the initial target profit specified in the contract at the time of contract award; or

(ii) If an immediate adjustment to the contract target price and contract target profit would have a significant adverse impact on the incentive price revision relationship under the contract, or adversely affect the contract financing provisions, the Contracting Officer may defer such adjustment until establishment of the total final price of the contract. The total final price established in accordance with the incentive price revision provisions of the contract shall be reduced by an amount equal to the initial target profit specified in the contract at the time of contract award and such reduced price shall be the total final contract price.

(5) For firm-fixed-price contracts, by 10 percent of the initial contract price or a profit amount determined by the Contracting Officer from records or documents in existence prior to the date of the contract award.

(c) The Government may, at its election, reduce a prime Contractor's price or fee in accordance with the procedures of paragraph (b) of this clause for violations of the Act by its subcontractors by an amount not to exceed the amount of profit or fee reflected in the subcontract at the time the subcontract was first definitively priced.

(d) In addition to the remedies in paragraphs (a) and (c) of this clause, the Government may terminate this contract for default. The rights and remedies of the Government specified herein are not exclusive, and are in addition to any other rights and remedies provided by law or under this contract.

CLAUSE I.8 - FAR 52.203-12 LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (JUN 1997)

(a) Definitions

"Agency," as used in this Clause, means executive agency as defined in 2.101.

"Covered Federal action," as used in this Clause, means any of the following Federal actions:

(1) The awarding of any Federal contract.

(2) The making of any Federal grant.

(3) The making of any Federal loan.

(4) The entering into of any cooperative agreement.

(5) The extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

"Indian tribe" and "tribal organization," as used in this clause, have the meaning provided in Section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450B) and include Alaskan Natives.

"Influencing or attempting to influence," as used in this clause, means making, with the intent to influence, any communication to or appearance before an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal action.

"Local government," as used in this clause, means a unit of government in a State and, if chartered, established, or otherwise recognized by a State for the performance of a governmental duty, including a local public authority, a special district, an intrastate district, a council of governments, a sponsor group representative organization, and any other instrumentality of a local government.

"Officer or employee of an agency," as used in this clause, includes the following individuals who are employed by an agency:

(1) An individual who is appointed to a position in the Government under Title 5, United States Code, including a position under a temporary appointment.

(2) A member of the uniformed services, as defined in Subsection 101(3), Title 37, United States Code.

(3) A special Government employee, as defined in Section 202, Title 18, United States Code.

(4) An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act, Title 5, United States Code, Appendix 2.

"Person," as used in this clause, means an individual, corporation, company, association, authority, firm, partnership, society, State, and local government,

regardless of whether such entity is operated for profit, or not for profit. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

"Reasonable compensation," as used in this clause, means, with respect to a regularly employed officer or employee of any person, compensation that is consistent with normal compensation for such officer or employee for work that is not furnished to, not funded by, or not furnished in cooperation with the Federal Government.

"Reasonable payment," as used in this clause, means, with respect to professional and other technical services, a payment in an amount that is consistent with the amount normally paid for such services in the private sector.

"Recipient," as used in this clause, includes the Contractor, and all subcontractors. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

"Regularly employed," as used in this clause, means, with respect to an officer or employee of a person requesting or receiving a Federal contract, an officer or employee who is employed by such person for at least 130 working days within one (1) year immediately preceding the date of the submission that initiates agency consideration of such person for receipt of such contract. An officer or employee who is employed by such person for less than 130 working days within one (1) year immediately preceding the date of the submission that initiates agency consideration of such person shall be considered to be regularly employed as soon as he or she is employed by such person for 130 working days.

"State," as used in this clause, means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, an agency or instrumentality of a State, and multi-State, regional, or interstate entity having governmental duties and powers.

(b) Prohibitions.

(1) Section 1352 of Title 31, United States Code, among other things, prohibits a recipient of a Federal contract, grant, loan, or cooperative agreement from using appropriated funds to pay any person for influencing, or attempting to influence, an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract; the making of any Federal grant; the making of any Federal loan; the entering into of any cooperative agreement; or the modification of any Federal contract, grant, loan, or cooperative agreement.

(2) The Act also requires Contractors to furnish a disclosure if any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a Federal contract, grant, loan, or cooperative agreement.

(3) The prohibitions of the Act do not apply under the following conditions:

(i) Agency and legislative liaison by own employees.

(A) The prohibition on the use of appropriated funds, in subparagraph (b)(1) of this clause, does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action if the payment is for agency and legislative liaison activities not directly related to a covered Federal action.

(B) For purposes of subdivision (b)(3)(i)(A) of this clause, providing any information specifically requested by an agency or Congress is permitted at any time.

(C) The following agency and legislative liaison activities are permitted at any time where they are not related to a specific solicitation for any covered Federal action:

(1) Discussing with an agency the qualities and characteristics (including individual demonstrations) of the person's products or services, conditions or terms of sale, and service capabilities.

(2) Technical discussions and other activities regarding the application or adaptation of the person's products or services for an agency's use.

(D) The following agency and legislative liaison activities are permitted where they are prior to formal solicitation of any covered Federal action --

(1) Providing any information not specifically requested but necessary for an agency to make an informed decision about initiation of a covered Federal action;

(2) Technical discussions regarding the preparation of an unsolicited proposal prior to its official submission; and

(3) Capability presentations by persons seeking awards from an agency pursuant to the provisions of the Small Business Act, as amended by Pub. L. 95-507, and subsequent amendments.

(E) Only those services expressly authorized by subdivision (b)(3)(i)(A) of this clause are permitted under this clause.

(ii) Professional and technical services.

(A) The prohibition on the use of appropriated funds, in subparagraph (b)(1) of this clause, does not apply in the case of -

(1) A payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action, if payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action.

(2) Any reasonable payment to a person, other than an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action if the payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action. Persons other than officers or employees of a person requesting or receiving a covered Federal action include consultants and trade associations.

(B) For purposes of subdivision (b)(3)(ii)(A) of this clause, "professional and technical services" shall be limited to advice and analysis directly applying any professional or technical discipline. For example, drafting of a legal document accompanying a bid or proposal by a lawyer is allowable. Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the

negotiation of a contract is allowable. However, communications with the intent to influence made by a professional (such as a licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this section unless they provide advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission or negotiation of a covered Federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her client's proposal, but generally advocate one proposal over another are not allowable under this section because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or proposal are not allowable under this section since the engineer is providing technical services but not directly in the preparation, submission or negotiation of a covered Federal action.

(C) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation and any other requirements in the actual award documents.

(D) Only those services expressly authorized by subdivisions (b)(3)(ii)(A)(1) and (2) of this clause are permitted under this clause.

(E) The reporting requirements of FAR 3.803(a) shall not apply with respect to payments of reasonable compensation made to regularly employed officers or employees of a person.

(c) Disclosure.

(1) The Contractor who requests or receives from an agency a Federal contract shall file with that agency a disclosure form, OMB Standard Form LLL, Disclosure of Lobbying Activities, if such person has made or has agreed to make any payment using nonappropriated funds (to include profits from any covered Federal action), which would be prohibited under subparagraph (b)(1) of this clause, if paid for with appropriated funds.

(2) The Contractor shall file a disclosure form at the end of each calendar quarter in which there occurs any event that materially affects the accuracy of the information contained in any disclosure form previously filed by such person

under subparagraph (c)(1) of this clause. An event that materially affects the accuracy of the information reported includes --

(I) A cumulative increase of $25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or

(ii) A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or

(iii) A change in the officer(s), employee(s), or Member(s) contacted to influence or attempt to influence a covered Federal action.

(3) The Contractor shall require the submittal of a certification, and if required, a disclosure form by any person who requests or receives any subcontract exceeding $100,000 under the Federal contract.

(4) All subcontractor disclosure forms (but not certifications) shall be forwarded from tier to tier until received by the prime Contractor. The prime Contractor shall submit all disclosures to the Contracting Officer at the end of the calendar quarter in which the disclosure form is submitted by the subcontractor. Each subcontractor certification shall be retained in the subcontract file of the awarding Contractor.

(d) Agreement. The Contractor agrees not to make any payment prohibited by this Clause.

(e) Penalties.

(1) Any person who makes an expenditure prohibited under paragraph (a) of this clause or who fails to file or amend the disclosure form to be filed or amended by paragraph (b) of this clause shall be subject to civil penalties as provided for by 31 U.S.C. 1352. An imposition of a civil penalty does not prevent the Government from seeking any other remedy that may be applicable.

(2) Contractors may rely without liability on the representation made by their subcontractors in the certification and disclosure form.

(f) Cost allowability. Nothing in this clause makes allowable or reasonable any costs which would otherwise be unallowable or unreasonable. Conversely, costs made specifically unallowable by the requirements in this clause will not be made allowable under any other provision.

CLAUSE I.9 - FAR 52.204-4 PRINTING/COPYING DOUBLE-SIDED ON RECYCLED PAPER (JUN 1996)

(a) In accordance with Executive Order 12873 of October 20, 1993, as amended by Executirve Order 12995, dated March 25, 1996, the Offeror/Contractor is encouraged to submit paper documents, such as offers, letters, or reports, that are printed/copied double-sided on recycled paper that has at least 20 percent postconsumer material.

(b) The 20 percent standard applies to high-speed copier paper, offset paper, forms bond, computer printout paper, carbonless paper, file folders, white woven envelopes, and other uncoated printed and writing paper, such as writing and office paper, book paper, cotton fiber paper, and cover stock. An alternative to meeting the 20 percent postconsumer material standard is 50 percent recovered material content of certain industrial by-products.

CLAUSE I.9A - FAR 52.208-8 HELIUM REQUIREMENTS FORECAST AND REQUIRED SOURCES FOR HELIUM (JUN 1997)

(a) *Definitions*.

"Bureau helium distributor" means a private helium distributor which has established and maintains eligibility to distribute helium purchased from the Bureau of Land Management, as specified in 30 CFR 602.

"Bureau of Land Management," as used in this clause, means the Department of the Interior, Bureau of Land Management, Helium Field Operations, located at 801 South Fillmore Street, Amarillo, TX 79101-3545.

"Helium requirement forecast" means an estimate by the Contractor or subcontractor of the amount of helium required for performance of the contract or subcontract.

"Major helium requirement" means a helium requirement during a calendar month of 5,000 or more standard cubic feet (measured at 14.7 pounds per square inch absolute pressure and 70 degrees Fahrenheit temperature), including liquid helium gaseous equivalent. In any month in which the major requirement threshold is met, all helium purchased during that month is considered part of the major helium requirement.

(b) *Requirements—*

(1) *Helium Requirement Forecast*. The Contractor shall provide to the Contracting Officer a helium requirement forecast, point of contact, and telephone number within ten days of award.

(2) *Sources of Helium*. Except for helium acquired by the Contractor before the award of this contract, and to the extent that supplies are readily available, the Contractor shall purchase all major requirements of helium from--

(i) The Department of the Interior's Bureau of Land Management;

(ii) A Bureau helium distributor (a copy of the "List by Shipping Points of Private Distributors Eligible to Sell Helium to Federal Agencies," may be obtained from the Bureau of Land Management); or

(iii) A General Services Administration Federal Supply Schedule contract, if use is authorized by the Contracting Officer (see Subpart 51.1);

(3) Promptly upon award of any subcontract or order that involves a major helium requirement, the Contractor shall provide to the Bureau of Land Management, and to the Contracting Officer, written notification that includes--

(i) The prime contract number;

(ii) The name, address and telephone number of the subcontractor, including a point of contact; and

(iii) A copy of the subcontractor's helium requirement forecast.

(c) *Subcontracts—*

(1) The Contractor shall insert this clause, including this paragraph (c), in any subcontract or order that involves furnishing of a major helium requirement.

(2) When a subcontract involves a major helium requirement, the following statement shall be included: Helium furnished under this contract or order shall be helium that has been purchased from the Bureau of Land Management, or a listed Bureau helium distributor.

CLAUSE I.10 - FAR 52.209-6 PROTECTING THE GOVERNMENT'S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT (JUL 1995)

(a) The Government suspends or debars Contractors to protect the Government's interests. The Contractor shall not enter into any subcontract in excess of the small purchase limitation at FAR 13.000 with a Contractor that is debarred, suspended, or proposed for debarment unless there is a compelling reason to do so.

(b) The Contractor shall require each proposed first-tier sub- Contractor, whose subcontract will exceed the small purchase limitation at FAR 13.000, to disclose to the Contractor, in

writing, whether as of the time of award of the subcontract, the subcontractor, or its principals, is or is not debarred, suspended, or proposed for debarment by the Federal Government.

(c) A corporate officer or a designee of the Contractor shall notify the Contracting Officer, in writing, before entering into a subcontract with a party that is debarred, suspended, or proposed for debarment (see FAR 9.404 for information on the List of Parties Excluded from Procurement Programs). The notice must include the following:

(1) The name of the subcontractor.

(2) The Contractor's knowledge of the reasons for the sub-Contractor being on the List of Parties Excluded from Procurement Programs.

(3) The compelling reason(s) for doing business with the subcontractor notwithstanding its inclusion on the List of Parties Excluded From Procurement Programs.

(4) The systems and procedures the Contractor has established to ensure that it is fully protecting the Government's interests when dealing with such subcontractor in view of the specific basis for the party's debarment, suspension or proposed debarment.

CLAUSE I.11 - FAR 52.215-8 ORDER OF PRECEDENCE - UNIFORM CONTRACT FORMAT (OCT 1997)

Any inconsistency in this solicitation or contract shall be resolved by giving precedence in the following order:

(a) The Schedule (excluding the specifications).

(b) Representations and other instructions.

(c) Contract clauses.

(d) Other documents, exhibits, and attachments.

(e) The specifications.

CLAUSE I.12 - FAR 52.215-12 SUBCONTRACTOR COST OR PRICING DATA (OCT 1997)

(a) Before awarding any subcontract expected to exceed the threshold for submission of cost or pricing data at FAR 15.403-4, on the date of agreement on price or the date of

award, whichever is later; or before pricing any subcontract modification involving a pricing adjustment expected to exceed the threshold for submission of cost or pricing data at FAR 15.403-4, the Contractor shall require the subcontractor to submit cost or pricing data (actually or by specific identification in writing), unless an exception under FAR 15.403-1 applies.

(b) The Contractor shall require the subcontractor to certify in substantially the form prescribed in FAR 15.406-2 that, to the best of its knowledge and belief, the data submitted under paragraph (a) of this clause were accurate, complete, and current as of the date of agreement on the negotiated price of the subcontract or subcontract modification.

(c) In each subcontract that exceeds the threshold for submission of cost or pricing data at FAR 15.403-4, when entered into, the Contractor shall insert either --

(1) The substance of this clause, including this paragraph (c), if paragraph (a) of this clause requires submission of cost or pricing data for the subcontract; or

(2) The substance of the clause at FAR 52.215-13, Subcontractor Cost or Pricing Data--Modifications.

CLAUSE I.13 - FAR 52.215-13 SUBCONTRACTOR COST OR PRICING DATA--MODIFICATIONS (OCT 1997)

(a) The requirements of paragraphs (b) and (c) of this clause shall --

(1) Become operative only for any modification to this contract involving a pricing adjustment expected to exceed the threshold for submission of cost or pricing data at FAR 15.403-4; and

(2) Be limited to such modifications.

(b) Before awarding any subcontract expected to exceed the threshold for submission of cost or pricing data at FAR 15.403-4, on the date of agreement on price or the date of award, whichever is later; or before pricing any subcontract modification involving a pricing adjustment expected to exceed the threshold for submission of cost or pricing data at FAR 15.403-4, the Contractor shall require the subcontractor to submit cost or pricing data (actually or by specific identification in writing), unless an exception under FAR 15.403-1 applies.

(c) The Contractor shall require the subcontractor to certify in substantially the form prescribed in FAR 15.406-2 that, to the best of its knowledge and belief, the data submitted under paragraph (b) of this clause were accurate, complete, and current as of the date of agreement on the negotiated price of the subcontract or subcontract modification.

(d) The Contractor shall insert the substance of this clause, including this paragraph (d), in each subcontract that exceeds the threshold for submission of cost or pricing data at FAR 15.403-4 on the date of agreement on price or the date of award, whichever is later.

CLAUSE I.14 - FAR 52.219-8 UTILIZATION OF SMALL BUSINESS CONCERNS (JAN 1999)

(a) It is the policy of the United States that small business concerns, HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals**,** and small business concerns owned and controlled by women shall have the maximum practicable opportunity to participate in performing contracts let by any Federal agency, including contracts and subcontracts for subsystems, assemblies, components, and related services for major systems. It is further the policy of the United States that its prime Contractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts with small business concerns, HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals**,** and small business concerns owned and controlled by women.

(b) The Contractor hereby agrees to carry out this policy in the awarding of subcontracts to the fullest extent consistent with efficient contract performance. The Contractor further agrees to cooperate in any studies or surveys as may be conducted by the United States Small Business Administration or the awarding agency of the United States as may be necessary to determine the extent of the Contractor's compliance with this clause.

(c) *Definitions.* As used in this contract --

(1) “Small business concern” means a small business as defined pursuant to Section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto.

(2) “HUBZone small business concern” means a small business concern that appears on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration.

(3) “Small business concern owned and controlled by socially and economically disadvantaged individuals” means a small business concern that represents, as part of its offer, that it meets the definition of a small disadvantaged business concern in 13 CFR 124.1002.

(4) "Small business concern owned and controlled by women" means a small business concern --

(i) Which is at least 51 percent owned by one or more women, or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and

(ii) Whose management and daily business operations are controlled by one or more women; and

(d) Contractors acting in good faith may rely on written representations by their subcontractors regarding their status as a small business concern, a HUBZone small business concern, a small business concern owned and controlled by socially and economically disadvantaged individuals**,** or a small business concern owned and controlled by women.

CLAUSE I.15 - FAR 52.219-9 SMALL BUSINESS SUBCONTRACTING PLAN (JAN 1999)

(a) This clause does not apply to small business concerns.

(b) *Definitions.* As used in this clause --

"Commercial item" means a product or service that satisfies the definition of commercial item in section 2.101 of the Federal Acquisition Regulation.

"Commercial plan" means a subcontracting plan (including goals) that covers the offeror's fiscal year and that applies to the entire production of commercial items sold by either the entire company or a portion thereof (e.g., division, plant, or product line).

"Individual contract plan" means a subcontracting plan that covers the entire contract period (including option periods), applies to a specific contract, and has goals that are based on the offeror's planned subcontracting in support of the specific contract, except that indirect costs incurred for common or joint purposes may be allocated on a prorated basis to the contract.

"Master plan" means a subcontracting plan that contains all the required elements of an individual contract plan, except goals, and may be incorporated into individual contract plans, provided the master plan has been approved.

"Subcontract" means any agreement (other than one involving an employer-employee relationship) entered into by a Federal Government prime Contractor or subcontractor calling for supplies or services required for performance of the contract or subcontract.

(c) The offeror, upon request by the Contracting Officer, shall submit and negotiate a subcontracting plan, where applicable, that separately addresses subcontracting with

small business, HUBZone small business concerns, small disadvantaged business**,** and women-owned small business concerns. If the offeror is submitting an individual contract plan, the plan must separately address subcontracting with small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns, with a separate part for the basic contract and separate parts for each option (if any). The plan shall be included in and made a part of the resultant contract. The subcontracting plan shall be negotiated within the time specified by the Contracting Officer. Failure to submit and negotiate the subcontracting plan shall make the offeror ineligible for award of a contract.

(d) The offeror's subcontracting plan shall include the following:

(1) Goals, expressed in terms of percentages of total planned subcontracting dollars, for the use of small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns as subcontractors. The offeror shall include all subcontracts that contribute to contract performance, and may include a proportionate share of products and services that are normally allocated as indirect costs.

(2) A statement of:

(i) Total dollars planned to be subcontracted for an individual contract plan; or the offeror’s total projected sales, expressed in dollars, and the total value of projected subcontracts to support the sales for a commercial plan;

(ii) Total dollars planned to be subcontracted to small business concerns;

(iii) Total dollars planned to be subcontracted to HUBZone small business concerns;

(iv) Total dollars planned to be subcontracted to small disadvantaged business concerns**;** and

(v) Total dollars planned to be subcontracted to women-owned small business concerns.

(3) A description of the principal types of supplies and services to be subcontracted, and an identification of the types planned for subcontracting to --

(i) Small business concerns**;**

(ii) HUBZone small business concerns;

(iii) Small disadvantaged business concerns; and

(iv) Women-owned small business concerns.

(4) A description of the method used to develop the subcontracting goals in paragraph (d)(1) of this clause.

(5) A description of the method used to identify potential sources for solicitation purposes (e.g., existing company source lists, the Procurement Marketing and Access Network (PRO-Net) of the Small Business Administration (SBA), the list of certified small disadvantaged business concerns of the SBA, the National Minority Purchasing Council Vendor Information Service, the Research and Information Division of the Minority Business Development Agency in the Department of Commerce, or small, HUBZone small disadvantaged**,** and women-owned small business trade associations). A firm may rely on the information contained in PRO-Net as an accurate representation of a concern's size and ownership characteristics for the purposes of maintaining a small and women-owned small business source list. A firm shall rely the information contained in SBA's list of small disadvantaged business concerns as an accurate representation of a concern's size and ownership characteristics for the purposes of maintaining a small disadvantaged business source list. Use PRO-Net and/or the SBA list of small disadvantaged business concerns as its source list does not relieve a firm of its responsibilities (e.g., outreach, assistance, counseling, publicizing subcontracting opportunities) in this clause.

(6) A statement as to whether or not the offeror included indirect costs in establishing subcontracting goals, and a description of the method used to determine the proportionate share of indirect costs to be incurred with **--**

(i) Small business concerns;

(ii) HUBZone small business concerns;

(iii) Small disadvantaged business concerns; and

(iv) Women-owned small business concerns.

(7) The name of the individual employed by the offeror who will administer the offeror's subcontracting program, and a description of the duties of the individual.

(8) A description of the efforts the offeror will make to assure that small business, HUBZone small business, small disadvantaged business and women-owned small business concerns have an equitable opportunity to compete for subcontracts.

(9) Assurances that the offeror will include the clause of this contract entitled "Utilization of Small Business Concerns" in all subcontracts that offer further subcontracting opportunities, and that the offeror will require all subcontractors

(except small business concerns) that receive subcontracts in excess of $500,000 ($1,000,000 for construction of any public facility) to adopt a subcontracting plan that complies with the requirements of this clause.

(10) Assurances that the offeror will **--**

(i) Cooperate in any studies or surveys as may be required;

(ii) Submit periodic reports so that the Government can determine the extent of compliance by the offeror with the subcontracting plan;

(iii) Submit Standard Form (SF) 294, Subcontracting Report for Individual Contracts, and/or SF 295, Summary Subcontract Report, in accordance with the instructions on the forms or as provided in agency regulations and in paragraph (j) of this clause; and

(iv) Ensure that its subcontractors agree to submit SF 294 and SF 295.

(11) A description of the types of records that will be maintained concerning procedures that have been adopted to comply with the requirements and goals in the plan, including establishing source lists; and a description of the offeror's efforts to locate small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns and award subcontracts to them. The records shall include at least the following (on a plant-wide or company-wide basis, unless otherwise indicated):

(i) Source lists (e.g., Pro-Net), guides, and other data that identify small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns.

(ii) Organizations contacted in an attempt to locate sources that are small business, HUBZone small business, small disadvantaged business, or women-owned small business concerns.

(iii) Records on each subcontract solicitation resulting in an award of more than $100,000, indicating **--**

(A) Whether small business concerns were solicited and**,** if not, why not;

(B) Whether HUBZone small business concerns were solicited and, if not, why not;

(C) Whether small disadvantaged business concerns were solicited and**,** if not, why not;

(D) Whether women-owned small business concerns were solicited and**,** if not, why not; and

(E) If applicable, the reason award was not made to a small business concern.

(iv) Records of any outreach efforts to contact --

(A) Trade associations;

(B) Business development organizations; and

(C) Conferences and trade fairs to locate small, HUBZone small, small disadvantaged, and women-owned small business sources.

(v) Records of internal guidance and encouragement provided to buyers through **--**

(A) Workshops, seminars, training, etc.; and

(B) Monitoring performance to evaluate compliance with the program's requirements.

(vi) On a contract-by-contract basis, records to support award data submitted by the offeror to the Government, including the name, address, and business size of each subcontractor. Contractors having commercial plans need not comply with this requirement.

(e) In order to effectively implement this plan to the extent consistent with efficient contract performance, the Contractor shall perform the following functions:

(1) Assist small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns by arranging solicitations, time for the preparation of bids, quantities, specifications, and delivery schedules so as to facilitate the participation by such concerns. Where the Contractor's lists of potential small business, HUBZone small business, small disadvantaged business, and women-owned small business subcontractors are excessively long, reasonable effort shall be made to give all such small business concerns an opportunity to compete over a period of time.

(2) Provide adequate and timely consideration of the potentialities of small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns in all "make-or-buy" decisions.

(3) Counsel and discuss subcontracting opportunities with representatives of small business, HUBZone small business, small disadvantaged business, and women-owned small business firms.

(4) Provide notice to subcontractors concerning penalties and remedies for misrepresentations of business status as small, HUBZone small, small disadvantaged**,** or women-owned small business for the purpose of obtaining a subcontract that is to be included as part or all of a goal contained in the Contractor's subcontracting plan.

(f) A master plan on a plant or division-wide basis that contains all the elements required by paragraph (d) of this clause, except goals, may be incorporated by reference as a part of the subcontracting plan required of the offeror by this clause; provided --

(1) The master plan has been approved;

(2) The offeror ensures that the master plan is updated as necessary and provides copies of the approved master plan, including evidence of its approval, to the Contracting Officer; and

(3) Goals and any deviations from the master plan deemed necessary by the Contracting Officer to satisfy the requirements of this contract are set forth in the individual subcontracting plan.

(g) A commercial plan is the preferred type of subcontracting plan for contractors furnishing commercial items. The commercial plan shall relate to the offeror’s planned subcontracting generally, for both commercial and Government business, rather than solely to the Government contract. Commercial plans are also preferred for subcontractors that provide commercial items under a prime contract, whether or not the prime contractor is supplying a commercial item.

(h) Prior compliance of the offeror with other such subcontracting plans under previous contracts will be considered by the Contracting Officer in determining the responsibility of the offeror for award of the contract.

(i) The failure of the Contractor or subcontractor to comply in good faith with **--**

(1) The clause of this contract entitled "Utilization Of Small Business Concerns;" or

(2) An approved plan required by this clause, shall be a material breach of the contract.

(j) The Contractor shall submit the following reports:

(1) *Standard Form 294, Subcontracting Report for Individual Contracts.* This report shall be submitted to the Contracting Officer semiannually and at contract

completion. The report covers subcontract award data related to this contract. This report is not required for commercial plans.

(2) *Standard Form 295, Summary Subcontract Report.* This report encompasses all the contracts with the awarding agency. It must be submitted semi-annually for contracts with the Department of Defense and annually for contracts with civilian agencies. If the reporting activity is covered by a commercial plan, the reporting activity must report annually all subcontract awards under that plan. All reports submitted at the close of each fiscal year (both individual and commercial plans) shall include a breakout, in the Contractor's format, of subcontract awards, in whole dollars, to small disadvantaged business concerns by Standard Industrial Classification (SIC) Major Group. For a commercial plan, the Contractor may obtain from each of its subcontractors a predominant SIC Major Group and report all awards to that subcontractor under its predominant SIC Major Group.

CLAUSE I.16 - FAR 52.219-16 LIQUIDATED DAMAGES - SUBCONTRACTING PLAN (JAN 1999)

(a) "Failure to make a good faith effort to comply with the subcontracting plan," as used in this clause, means a willful or intentional failure to perform in accordance with the requirements of the subcontracting plan approved under the clause in this contract entitled "Small Business Subcontracting Plan," or willful or intentional action to frustrate the plan.

(b) Performance shall be measured by applying the percentage goals to the total actual subcontracting dollars or, if a commercial plan is involved, to the pro rata share of actual subcontracting dollars attributable to Government contracts covered by the commercial plan. If, at contract completion, or in the case of a commercial plan, at the close of the fiscal year for which the plan is applicable, the Contractor has failed to meet its subcontracting goals and the Contracting Officer decides in accordance with paragraph (c) of this clause that the Contractor failed to make a good faith effort to comply with its subcontracting plan, established in accordance with the clause in this contract entitled, "Small Business Subcontracting Plan", the Contractor shall pay the Government liquidated damages in an amount stated. The amount of probable damages attributable to the Contractor's failure to comply shall be an amount equal to the actual dollar amount by which the Contractor failed to achieve each subcontract goal.

(c) Before the Contracting Officer makes a final decision that the Contractor has failed to make such good faith effort, the Contracting Officer shall give the Contractor written notice specifying the failure and permitting the Contractor to demonstrate what good faith efforts have been made and to discuss the matter. Failure to respond to the notice may be taken as an admission that no valid explanation exists. If, after consideration of all the pertinent data, the Contracting Officer finds that the Contractor failed to make a good faith effort to comply with the subcontracting plan, the Contracting Officer shall

issue a final decision to that effect and require that the Contractor pay the Government liquidated damages as provided in paragraph (b) of this clause.

(d) With respect to commercial plans, the Contracting Officer who approved the plan will perform the functions of the Contracting Officer under this clause on behalf of all agencies with contracts covered by the commercial plan.

(e) The Contractor shall have the right of appeal, under the clause in this contract entitled, Disputes, from any final decision of the Contracting Officer.

(f) Liquidated damages shall be in addition to any other remedies that the Government may have.

CLAUSE I.17 - FAR 52.222-1 NOTICE TO THE GOVERNMENT OF LABOR DISPUTES (FEB 1997)

If the Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this contract, the Contractor shall immediately give notice, including all relevant information, to the Contracting Officer.

CLAUSE I.18 - FAR 52.222-3 CONVICT LABOR (AUG 1996)

The Contractor agrees not to employ in the performance of this contract any person undergoing a sentence of imprisonment which has been imposed by any court of a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, or the Trust Territory of the Pacific Islands. This limitation, however, shall not prohibit the employment by the Contractor in the performance of this contract of persons on parole or probation to work at paid employment during the term of their sentence or persons who have been pardoned or who have served their terms. Nor shall it prohibit the employment by the Contractor in the performance of this contract of persons confined for violation of the laws of any of the States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, or the Trust Territory of the Pacific Islands who are authorized to work at paid employment in the community under the laws of such jurisdiction, if-

(a) (1) The worker is paid or is in an approved work training program on a voluntary basis;

(2) Representatives of local union central bodies or similar labor union organizations have been consulted;

(3) Such paid employment will not result in the displacement of employed workers, or be applied in skills, crafts, or trades in which there is a surplus of available gainful labor in the locality, or impair existing contracts for services; and

(4) The rates of pay and other conditions of employment will not be less than those paid or provided for work of a similar nature in the locality in which the work is being performed; and

(b) The Attorney General of the United States has certified that the work-release laws or regulations of the jurisdiction involved are in conformity with the requirements of Executive Order 11755, as amended by Executive Orders 12608 and 12943.

CLAUSE I.19 - FAR 52.222-4 CONTRACT WORK HOURS AND SAFETY STANDARDS ACT - OVERTIME COMPENSATION (JUL 1995)

(a) Overtime requirements. No Contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics (see Federal Acquisition Regulation (FAR) 22.300) shall require or permit any such laborers or mechanics in any workweek in which the individual is employed on such work to work in excess of forty (40) hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than 1-1/2 times the basic rate of pay for all hours worked in excess of forty (40) hours in such workweek.

(b) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the provisions set forth in paragraph (a) of this clause, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic employed in violation of the provisions set forth in paragraph (a) of this clause in the sum of $10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by provisions set forth in paragraph (a) of this clause.

(c) Withholding for unpaid wages and liquidated damages. The Contracting Officer shall upon his or her own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any monies payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same prime Contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act which is held by the same Prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the provisions set forth in paragraph (b) of this clause.

(d) Payrolls and basic records.

(1) The Contractor or subcontractor shall maintain payrolls and basic payroll records during the course of contract work and shall preserve them for a period of three (3) years from the completion of the contract for all laborers and mechanics working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Nothing in this paragraph shall require the duplication of records required to be maintained for construction work by Department of Labor regulations at 29 CFR 5.5(a)(3) implementing the Davis-Bacon Act.

(2) The records to be maintained under paragraph (d)(1) of this clause shall be made available by the Contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the Contracting Officer or the Department of Labor. The Contractor or subcontractor shall permit such representatives to interview employees during working hours on the job.

(e) Subcontracts. The Contractor or subcontractor shall insert in any subcontracts exceeding $100,000 the provisions set forth in paragraphs (a) through (e) of this clause and also a clause requiring the subcontractors to include these provisions in any lower-tier subcontracts. The prime Contractor shall be responsible for compliance by any subcontractor or lower- tier subcontractor with the provisions set forth in paragraphs (a) through (e) of this clause.

CLAUSE I.20 - FAR 52.222-11 SUBCONTRACTS (LABOR STANDARDS) (FEB 1988)

(a) The Contractor or subcontractor shall insert in any subcontracts the clauses entitled, "Davis-Bacon Act", “Contract Work Hours and Safety Standards Act-Overtime Compensation", "Apprentices and Trainees", "Payrolls and Basic Records", "Compliance with Copeland Act Requirements", "Withholding of Funds", "Subcontracts (Labor Standards)", "Contract Termination-Debarment", "Disputes Concerning Labor Standards", "Compliance with Davis-Bacon and Related Act Regulations", and "Certification of Eligibility", and such other clauses as the Contracting Officer may, by appropriate instructions, require, and also a clause requiring subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for compliance by any subcontractor or lower-tier subcontractor with all the contract clauses cited in this paragraph.

(b) (1) Within fourteen (14) days after award of the contract, the Contractor shall deliver to the Contracting Officer a completed Statement and Acknowledgement Form (SF 1413) for each subcontract, including the subcontractor's signed and dated acknowledgement that the clauses set forth in paragraph (a) of this clause have been included in the subcontract.

(2) Within fourteen (14) days after the award of any subsequently awarded subcontract the Contractor shall deliver to the Contracting Officer an updated completed SF 1413 for such additional subcontract.

CLAUSE I.20A - FAR 52.222-17 LABOR STANDARDS FOR CONSTRUCTION WORK – FACILITIES CONTRACTS (FEB 1988)

(a) In the event that construction, alteration, or repair (including painting and decorating) of public buildings or public works is to be performed hereunder, the Contractor shall comply with the following listed clauses of the Federal Acquisition Regulation in performance of such work:

(1) Contract Work Hours and Safety Standards Act--Overtime Compensation at 52.222-4.

(2) Davis-Bacon Act at 52.222-6.

(3) Withholding of Funds at 52.222-7.

(4) Payrolls and Basic Records at 52.222-8.

(5) Apprentices and Trainees at 52.222-9.

(6) Compliance with Copeland Act Requirements at 52.222-10.

(7) Subcontracts (Labor Standards) at 52.222-11.

(8) Contract Termination--Debarment at 52.222-12.

(9) Compliance with Davis-Bacon and Related Act Regulations at 52.222-13.

(10) Disputes Concerning Labor Standards at 52.222-14.

(11) Certification of Eligibility at 52.222-15.

(b) Upon determination by the Contracting Officer that the Davis-Bacon Act is applicable to any item of work to be performed hereunder, a determination of the prevailing wage rates shall be incorporated into the contract by modification.

(c) No construction, alteration, or repair (including painting and decorating) of public buildings or public works shall be performed under this contract without incorporation of the wage determination unless the Contracting Officer authorizes the start of work because of unusual or emergency situations, in which case the wage determination shall be incorporated as soon as possible and made retroactive to the start of the work.

CLAUSE 1.21 – FAR 52.222-21 PROHIBITION OF SEGREGATED FACILITIES (FEB 1999)

(a) *Segregated facilities,* as used in this clause, means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation and housing facilities provided for employees, that are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, sex, or national origin because of written or oral policies or employee custom. The term does not include separate or single-user rest rooms or necessary dressing or sleeping areas provided to assure privacy between the sexes.

(b) The Contractor agrees that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any locations under its control where segregated facilities are maintained. The Contractor agrees that a breach of this clause is a violation of the Equal Opportunity clause in this contract.

(c) The Contractor shall include this clause in every subcontract and purchase order that is subject to the Equal Opportunity clause of this contract.

CLAUSE I.22 - FAR 52.222-26 EQUAL OPPORTUNITY (FEB 1999)

(a) If, during any 12-month period (including the 12 months preceding the award of this contract), the Contractor has been or is awarded nonexempt Federal contracts and/or subcontracts that have an aggregate value in excess of $10,000, the Contractor shall comply with subparagraphs (b)(1) through (11) of this clause. Upon request, the Contractor shall provide information necessary to determine the applicability of this clause.

(b) During performance of this contract, the Contractor agrees as follows:

(1) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. However, it shall not be a violation of this clause for the Contractor to extend a publicly announced preference in employment to Indians living on or near an Indian reservation, in connection with employment opportunities on or near an Indian reservation, as permitted by 41 CFR 60-1.5.

(2) The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. This shall include, but not be limited to, (i) employment, (ii) upgrading, (iii) demotion, (iv) transfer, (v) recruitment or recruitment advertising, (vi) layoff or termination, (vii) rates of pay

or other forms of compensation, and (viii) selection for training, including apprenticeship.

(3) The Contractor shall post in conspicuous places available to employees and applicants for employment the notices to be provided by the Contracting Officer that explain this clause.

(4) The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(5) The Contractor shall send, to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, the notice to be provided by the Contracting Officer advising the labor union or workers' representative of the Contractor's commitments under this clause, and post copies of the notice in conspicuous places available to employees and applicants for employment.

(6) The Contractor shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.

(7) The Contractor shall furnish to the contracting agency all information required by Executive Order 11246, as amended, and by the rules, regulations, and orders of the Secretary of Labor. The Contractor shall also file Standard Form 100 (EEO-1), or any successor form, as prescribed in 41 CFR part 60-1. Unless the Contractor has filed within the 12 months preceding the date of contract award, the Contractor shall, within 30 days after contract award, apply to either the regional Office of Federal Contract Compliance Programs (OFCCP) or the local office of the Equal Employment Opportunity Commission for the necessary forms.

(8) The Contractor shall permit access to its premises, during normal business hours, by the Contracting agency or the OFCCP for the purpose of conducting on-site compliance evaluations and complaint investigations. The Contractor shall permit the Government to inspect and copy any books, accounts, records (including computerized records), and other material that may be relevant to the matter under investigation and pertinent to compliance with Executive Order 11246, as amended, and rules and regulations that implement the Executive Order.

(9) If the OFCCP determines that the Contractor is not in compliance with this clause or any rule, regulation, or order of the Secretary of Labor, this contract may be cancelled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts, under the procedures authorized in Executive Order 11246, as amended. In addition, sanctions may

be imposed and remedies invoked against the Contractor as provided in Executive Order 11246, as amended; in the rules, regulations, and orders of the Secretary of Labor; or as otherwise provided by law.

(10) The Contractor shall include the terms and conditions of subparagraphs (b)(1) through (11) of this clause in every subcontract or purchase order that is not exempted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each subcontractor or vendor.

(11) The Contractor shall take such action with respect to any subcontract or purchase order as the Contracting Officer may direct as a means of enforcing these terms and conditions, including sanctions for noncompliance; provided, that if the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of any direction, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

(c) Notwithstanding any other clause in this contract, disputes relative to this clause will be governed by the procedures in 41 CFR 60-1.1.

CLAUSE I.23 - RESERVED

CLAUSE I.24 - FAR 52.222-35 AFFIRMATIVE ACTION FOR DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA (APR 1998)

(a) Definitions. As used in this clause--

"All employment openings" includes all positions except executive and top management, those positions that will be filled from within the contractor's organization, and positions lasting 3 days or less. This term includes full-time employment, temporary employment of more than 3 days' duration, and part-time employment.

"Appropriate office of the State employment service system" means the local office of the Federal-State national system of public employment offices with assigned responsibility to serve the area where the employment opening is to be filled, including the District of Columbia, Guam, the Commonwealth of Puerto Rico, and the Virgin Islands.

"Positions that will be filled from within the Contractor's organization" means employment openings for which no consideration will be given to persons outside the Contractor's organization (including any affiliates, subsidiaries, and parent companies) and includes any openings that the Contractor proposes to fill from regularly established "recall" lists. The exception does not apply to a particular opening once an employer decides to consider applicants outside of its organization.

“Veteran of the Vietnam era" means a person who--

(1) Served on active duty for a period of more than 180 days, any part of which occurred between August 5, 1964, and May 7, 1975, and was discharged or released therefrom with other than a dishonorable discharge; or

(2) Was discharged or released from active duty for a service-connected disability if any part of such active duty was performed between August 5, 1964, and May 7, 1975.

(b) General.

(1) Regarding any position for which the employee or applicant for employment is qualified, the Contractor shall not discriminate against the individual because the individual is a disabled veteran or a veteran of the Vietnam era. The Contractor

(2) agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified disabled veterans and veterans of the Vietnam era

without discrimination based upon their disability or veterans' status in all employment practices such as--

(i) Employment;

(ii) Upgrading;

(iii) Demotion or transfer;

(iv) Recruitment;

(v) Advertising;

(vi) Layoff or termination;

(vii) Rates of pay or other forms of compensation; and

(viii) Selection for training, including apprenticeship.

(2) The Contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor (Secretary) issued under the Vietnam Era Veterans' Readjustment Assistance Act of 1972 (the Act), as amended.

(c) Listing openings.

(1) The Contractor agrees to list all suitable employment openings existing at contract award or occurring during contract performance, at an appropriate office of the State employment service system in the locality where the opening occurs. These openings include those occurring at any Contractor facility, including one not connected with performing this contract. An independent corporate affiliate is exempt from this requirement.

(2) State and local government agencies holding Federal contracts of $10,000 or more shall also list all their suitable openings with the appropriate office of the State employment service.

(3) The listing of suitable employment openings with the State employment service system is required at least concurrently with using any other recruitment source or effort and involves the obligations of placing a bona fide job order, including accepting referrals of veterans and nonveterans. This listing does not require hiring any particular job applicant or hiring from any particular group of job applicants and is not intended to relieve the Contractor from any requirements of Executive orders or regulations concerning nondiscrimination in employment.

(4) Whenever the Contractor becomes contractually bound to the listing terms of this clause, it shall advise the State employment service system, in each State where

it has establishments, of the name and location of each hiring location in the State. As long as the Contractor is contractually bound to these terms and has so advised the State system, it need not advise the State system of subsequent contracts. The Contractor may advise the State system when it is no longer bound by this contract clause.

(5) Under the most compelling circumstances, an employment opening may not be suitable for listing, including situations when --

(i) The Government's needs cannot reasonably be supplied;

(ii) Listing would be contrary to national security; or

(iii) The requirement of listing would not be in the Government's interest.

(d) Applicability. This clause does not apply to the listing of employment openings that occur and are filled outside the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, and the Virgin Islands.

(e) Postings.

(1) The Contractor agrees to post employment notices stating--

(i) The Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified disabled veterans and veterans of the Vietnam era; and

(ii) The rights of applicants and employees.

(2) These notices shall be posted in conspicuous places that are available to employees and applicants for employment. They shall be in a form prescribed by the Deputy Assistant Secretary for Federal Contract Compliance Programs, Department of Labor (Deputy Assistant Secretary), and provided by or through the Contracting Officer.

(3) The Contractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of the Act, and is committed to take affirmative action to employ, and advance in employment, qualified special disabled and Vietnam Era veterans.

(f) Noncompliance. If the Contractor does not comply with the requirements of this clause, appropriate actions may be taken under the rules, regulations, and relevant orders of the Secretary issued pursuant to the Act.

(g) Subcontracts. The Contractor shall include the terms of this clause in every subcontract or purchase order of $10,000 or more unless exempted by rules, regulations, or orders of the Secretary. The Contractor shall act as specified by the Director to enforce the terms, including action for noncompliance.

CLAUSE I.25 - FAR 52.222-36 AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES (JUN 1998)

(a) General.

(1) Regarding any position for which the employee or applicant for employment is qualified, the Contractor shall not discriminate against any employee or applicant because of physical or mental disability. The Contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified individuals with disabilities without discrimination based upon their physical or mental disability in all employment practices such as --

(i) Recruitment, advertising, and job application procedures;

(ii) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff, and rehiring;

(iii) Rates of pay or any other form of compensation and changes in compensation;

(iv) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;

(v) Leaves of absence, sick leave, or any other leave;

(vi) Fringe benefits available by virtue of employment, whether or not administered by the Contractor;

(vii) Selection and financial support for training, including apprenticeships, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;

(viii) Activities sponsored by the Contractor, including social or recreational programs; and

` (ix) Any other term, condition, or privilege of employment.

(2) The Contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor (Secretary) issued under the Rehabilitation Act of 1973 (29 U.S.C. 793) (the Act), as amended.

(b) Postings.

(1) The Contractor agrees to post employment notices stating -- (i) the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified individuals with disabilities; and (ii) the rights of applicants and employees.

(2) These notices shall be posted in conspicuous places that are available to employees and applicants for employment. The Contractor shall ensure that applicants and employees with disabilities are informed of the contents of the notice (e.g., the Contractor may have the notice read to a visually disabled individual, or may lower the posted notice so that it might be read by a person in a wheelchair). The notices shall be in a form prescribed by the Deputy Assistant Secretary for Federal Contract Compliance of the U.S. Department of Labor (Deputy Assistant Secretary), and shall be provided by or through the Contracting Officer.

(3) The Contractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of Section 503 of the Act and is committed to take affirmative action to employ, and advance in employment, qualified individuals with physical or mental disabilities.

(c) Noncompliance. If the Contractor does not comply with the requirements of this clause, appropriate actions may be taken under the rules, regulations, and relevant orders of the Secretary issued pursuant to the Act.

(d) Subcontracts. The Contractor shall include the terms of this clause in every subcontract or purchase order in excess of $10,000 unless exempted by rules, regulations, or orders of the Secretary. The Contractor shall act as specified by the Deputy Assistant Secretary to enforce the terms, including action for noncompliance.

CLAUSE I.26 - FAR 52.222-37 EMPLOYMENT REPORTS ON DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA (JAN 1999)

(a) Unless the Contractor is a State or local government agency, the Contractor shall report at least annually, as required by the Secretary of Labor, on--

(1) The number of special disabled veterans and the number of veterans of the Vietnam era in the workforce of the contractor by job category and hiring location; and

(2) The total number of new employees hired during the period covered by the report, and of that total, the number of special disabled veterans, and the number of veterans of the Vietnam era.

(b) The above items shall be reported by completing the form entitled "Federal Contractor Veterans' Employment Report VETS-100."

(c) Reports shall be submitted no later than September 3o of each year beginning September 30, 1988.

(d) The employment activity report required by paragraph (a)(2) of this clause shall reflect total hires during the most recent 12-month period as of the ending date selected for the employment profile report required by paragraph (a)(1) of this clause. Contractors may select an ending date:

(1) As of the end of any pay period during the period January through March 1st of the year the report is due, or

(2) As of December 31, if the contractor has previous written approval from the Equal Employment Opportunity Commission to do so for purposes of submitting the Employer Information Report EEO-1 (Standard Form 100).

(e) The count of veterans reported according to paragraph (a) of this clause shall be based on voluntary disclosure. Each Contractor subject to the reporting requirements at 38 U.S.C. 4212 shall invite all disabled veterans and veterans of the Vietnam era who wish to benefit under the affirmative action program at 38 U.S.C. 4212 to identify themselves to the Contractor. The invitation shall state that the information is voluntarily provided; that the information will be kept confidential; that disclosure or refusal to provide the information will not subject the applicant or employee to any adverse treatment; and that the information will be used only in accordance with the regulations promulgated under 38 U.S.C. 4212.

(f) Subcontracts. The Contractor shall include the terms of this clause in every subcontract or purchase order of $10,000 or more unless exempted by rules, regulations, or orders of the Secretary.

CLAUSE I.27 - FAR 52.223-2 CLEAN AIR AND WATER (APR 1984)

(a) "Air Act", as used in this clause, means the Clean Air Act (42 U.S.C. 7401 et seq.).

"Clean air standards", as used in this Clause, means:

(1) Any enforceable rules, regulations, guidelines, standards, limitations, orders, controls, prohibitions, work practices, or other requirements contained in, issued under, or otherwise adopted under the Air Act or Executive Order 11738;

(2) An applicable implementation plan as described in Section 110(d) of the Air Act (42 U.S.C. 7410(d);

(3) An approved implementation procedure or plan under Section 111(c) or Section 111(d) of the Air Act (42 U.S.C. 7411(c) or (d); or

(4) An approved implementation procedure under Section 112(d) of the Air Act (42 U.S.C. 7412(d)).

"Clean water standards", as used in this Clause, means any enforceable limitation, control, condition, prohibition, standard, or other requirement promulgated under the Water Act or contained in a permit issued to a discharger by the Environmental Protection Agency or by a State under an approved program, as authorized by Section 402 of the Water Act (33 U.S.C. 1342), or by local government to ensure compliance with pretreatment regulations as required by Section 307 of the Water Act (33 U.S.C. 1317).

"Compliance", as used in this Clause, means compliance with:

(1) Clean air or water standards; or

(2) A schedule or plan ordered or approved by a court of competent jurisdiction, the Environmental Protection Agency, or an air or water pollution control agency under the requirements of the Air Act or Water Act and related regulations.

"Facility", as used in this Clause, means any building, plant, installation, structure, mine, vessel or other floating craft, location, or site of operations, owned, leased, or supervised by a Contractor or subcontractor, used in the performance of a contract or subcontract. When a location or site of operations includes more than one building, plant, installation, or structure, the entire location or site shall be deemed a facility except when the Administrator, or a designee, of the Environmental Protection Agency, determines the independent facilities are collocated in one geographical area.

"Water Act", as used in this Clause, means Clean Water Act (33 U.S.C. 1251, et seq.).

(b) The Contractor agrees:

(1) To comply with the requirements of Section 114 of the Clean Air Act (42 U.S.C. 7414) and Section 308 of the Clean Water Act (33 U.S.C. 1318) relating to inspection, monitoring, entry, reports, and information, as well as other requirements specified in Section 114 and Section 308 of the Air Act and the Water Act, and all regulations and guidelines issued to implement those acts before the award of this contract;

(2) That no portion of the work required by this prime contract will be performed in a facility listed on the Environmental Protection Agency List of Violating Facilities on the date when this contract was awarded unless and until the EPA eliminates the name of the facility from the listing;

(3) To use best efforts to comply with clean air standards and clean water standards at the facility in which the contract is being performed; and

(4) To insert the substance of this clause into any nonexempt subcontract, including this subparagraph (b)(4).

CLAUSE I.28 - FAR 52.223-5 POLLUTION PREVENTION AND RIGHT-TO-KNOW INFORMATION (APR 1998)

(a) Executive Order 12856 of August 3, 1993, requires Federal facilities to comply with the provisions of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA)(42 U.S.C. 11001-11050) and the Pollution Prevention Act of 1990(PPA)(42 U.S.C. 13101-13109).

(b) The Contractor shall provide all information needed by the Federal facility to comply with the emergency planning reporting requirements of Section 302 of EPCRA; the emergency notice requirements of Section 304 of EPCRA; the list of Material Safety Data Sheets required by Section 311 of EPCRA; the emergency and hazardous chemical inventory forms of Section 312 of EPCRA; the toxic chemical release inventory of Section 313 of EPCRA, which includes the reduction and recycling information required by Section 6607 of PPA; and the toxic chemical reduction goals requirements of Section 3-302 of Executive Order 12856.

CLAUSE I.29 - FAR 52.223-11 OZONE-DEPLETING SUBSTANCES (JUN 1996)

(a) *Definition.* "Ozone-depleting substance", as used in this clause, means any substance designated as Class I by the Environmental Protection Agency (EPA) (40 CFR Part 82), including but not limited to chlorofluorocarbons, halons, carbon tetrachloride, and methyl chloroform; or any substance designated as Class II by EPA (40 CFR Part 82), including but not limited to hydrochlorofluorocarbons.

(b) The Contractor shall label products which contain or are manufactured with ozone-depleting substances in the manner and to the extent required by 42 U.S.C. 7671j (b), (c), and (d) and 40 CFR Part 82, Subpart E, as follows:

WARNING

Contains (or manufactured with, if applicable) *_____, a substance(s) which harm(s) public health and environment by destroying ozone in the upper atmosphere.

* The Contractor shall insert the name of the substance(s).

CLAUSE I.30 - FAR 52.223-12 REFRIGERATION EQUIPMENT AND AIR CONDITIONERS (MAY 1995)

The Contractor shall comply with the applicable requirements of Sections 608 and 609 of the Clean Air Act (42 U.S.C. 7671g and 7671h) as each or both apply to this contract.

CLAUSE I.30A - FAR 52.223-14 TOXIC CHEMICAL RELEASE REPORTING (OCT 1996)

(a) Unless otherwise exempt, the Contractor, as owner or operator of a facility used in the performance of this contract, shall file by July 1 for the prior calendar year an annual Toxic Chemical Release Inventory Form (Form R) as described in sections 313(a) and (g) of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) (42 U.S.C. 11023(a) and (g)), and section 6607 of the Pollution Prevention Act of 1990 (PPA) (42 U.S.C. 13106). The Contractor shall file, for each facility subject to the Form R filing and reporting requirements, the annual Form R throughout the life of the contract.

(b) A Contractor owned or operated facility used in the performance of this contract is exempt from the requirement to file an annual Form R if--

(1) The facility does not manufacture, process, or otherwise use any toxic chemicals listed under section 313(c) of EPCRA, 42 U.S.C. 11023(c);

(2) The facility does not have 10 or more full-time employees as specified in section 313(b)(1)(A) of EPCRA, 42 U.S.C. 11023(b)(1)(A);

(3) The facility does not meet the reporting thresholds of toxic chemicals established under section 313(f) of EPCRA, 42 U.S.C. 11023(f) (including the alternate thresholds at 40 CFR 372.27, provided an appropriate certification form has been filed with EPA);

(4) The facility does not fall within Standard Industrial Classification Code (SIC) designations 20 through 39 as set forth in section 19.102 of the Federal Acquisition Regulation (FAR); or

(5) The facility is not located within any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Northern Mariana Islands, or any other territory or possession over which the United States has jurisdiction.

(c) If the Contractor has certified to an exemption in accordance with one or more of the criteria in paragraph (b) of this clause, and after award of the contract circumstances change so that any of its owned or operated facilities used in the performance of this contract is no longer exempt--

(1) The Contractor shall notify the Contracting Officer; and

(2) The Contractor, as owner or operator of a facility used in the performance of this contract that is no longer exempt, shall--

(i) Submit a Toxic Chemical Release Inventory Form (Form R) on or before July 1 for the prior calendar year during which the facility becomes eligible; and

(ii) Continue to file the annual Form R for the life of the contract for such facility.

(d) The Contracting Officer may terminate this contract or take other action as appropriate, if the Contractor fails to comply accurately and fully with the EPCRA and PPA toxic chemical release filing and reporting requirements.

(e) Except for acquisitions of commercial items as defined in FAR Part 2, the Contractor shall--

(1) For competitive subcontracts expected to exceed $100,000 (including all options), include a solicitation provision substantially the same as the provision at FAR 52.223-13, Certification of Toxic Chemical Release Reporting; and

(2) Include in any resultant subcontract exceeding $100,000 (including all options), the substance of this clause, except this paragraph (e).

CLAUSE I.31 - FAR 52.224-1 PRIVACY ACT NOTIFICATION (APR 1984)

The Contractor will be required to design, develop, or operate a system of records on individuals to accomplish an agency function subject to the Privacy Act of 1974, Public Law 93-579, December 31, 1974 (5 U.S.C. 552a) and applicable agency regulations. Violation of the Act may involve the imposition of criminal penalties.

CLAUSE I.32 - FAR 52.224-2 PRIVACY ACT (APR 1984)

(a) The Contractor agrees to:

(1) Comply with the Privacy Act of 1974 (the Act) and the agency rules and regulations issued under the Act in the design, development, or operation of

any system of records on individuals to accomplish an agency function when the contract specifically identifies:

(i) The system of records; and

(ii) The design, development, or operation work that the Contractor is to perform;

(2) Include the Privacy Act notification contained in this contract in every solicitation and resulting subcontract and in every subcontract awarded without a solicitation, when the work statement in the proposed subcontract requires the redesign, development, or operation of a system of records on individuals that is subject to the Act; and

(3) Include this clause, including this subparagraph (3), in all subcontracts awarded under this contract which requires the design, development, or operation of such a system of records.

(b) In the event of violations of the Act, a civil action may be brought against the agency involved when the violation concerns the design, development, or operation of a system of records on individuals to accomplish an agency function, and criminal penalties may be imposed upon the officers or employees of the agency when the violation concerns the operation of a system of records on individuals to accomplish an agency function. For purposes of the Act, when the contract is for the operation of a system of records on individuals to accomplish an agency function, the Contractor is considered to be an employee of the agency.

(c) (1) "Operation of a system of records", as used in this Clause, means performance of any of the activities associated with maintaining the system of records, including the collection, use, and dissemination of records.

(2) "Record", as used in this Clause, means any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, education, financial transactions, medical history, and criminal or employment history and that contains the person's name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a fingerprint or voiceprint or a photograph.

(3) "System of records on individuals," as used in this Clause, means a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual.

CLAUSE I.33 - FAR 52.225-5 BUY AMERICAN ACT -- CONSTRUCTION MATERIALS (JUN 1997)

(a) Definitions. As used in this clause --

"Components" means those articles, materials, and supplies incorporated directly into construction materials.

"Construction material" means an article, material, or supply brought to the construction site for incorporation into the building or work. Construction material also includes an item brought to the site pre-assembled from articles, materials or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, which are discrete systems incorporated into a public building or work and which are produced as a complete system, shall be evaluated as a single and distinct construction material regardless of when or how the individual parts or components of such systems are delivered to the construction site.

“Domestic construction material" means

(1) an unmanufactured construction material mined or produced in the United States; or

(2) a construction material manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind as the construction materials determined to be unavailable pursuant to subparagraph 25.202(a)(2) of the Federal Acquisition Regulation (FAR) shall be treated as domestic.

(b) (1) The Buy American Act (41 U.S.C. 10a-10d) requires that only domestic construction material be used in performing this contract, except as provided in paragraphs (b)(2) and (b)(3) of this clause.

(2) This requirement does not apply to the excepted construction material or components listed by the Government as follows:

None

(3) Other foreign construction material may be added to the list in paragraph (b)(2) of this clause if the Government determines that --

(i) The cost would be unreasonable (the cost of a particular domestic construction material shall be determined to be unreasonable when the cost of such material exceeds the cost of foreign material by more than 6 percent, unless the agency head determines a higher percentage to be appropriate);

(ii) The application of the restriction of the Buy American Act to a particular construction material would be impracticable or inconsistent with the public interest; or

(iii) The construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality.

(4) The Contractor agrees that only domestic construction material will be used by the Contractor, subcontractors, material men, and suppliers in the performance of this contract, except for foreign construction materials, if any, listed in paragraph (b)(2) of this clause.

(c) Request for determination.

(1) Contractors requesting to use foreign construction material under paragraph (b)(3) of this clause shall provide adequate information for Government evaluation of the request for a determination regarding the inapplicability of the Buy American Act. Each submission shall include a description of the foreign and domestic construction materials, including unit of measure, quantity, price, time of delivery or availability, location of the construction project, name and address of the proposed contractor, and a detailed justification of the reason for use of foreign materials cited in accordance with paragraph (b)(3) of this clause. A submission based on unreasonable cost shall include a reasonable survey of the market and a completed price comparison table in the format in paragraph (d) of this clause. The price of construction material shall include all delivery costs to the construction site and any applicable duty (whether or not a duty-free certificate may be issued).

(2) If the Government determines after contract award that an exception to the Buy American Act applies, the contract shall be modified to allow use of the foreign construction material, and adequate consideration shall be negotiated. However, when the basis for the exception is the unreasonable price of a domestic construction material, adequate consideration shall not be less than the differential established in paragraph (b)(3)(i) of this clause.

(3) If the Government does not determine that an exception to the Buy American Act applies, the use of that particular foreign construction material will be a failure to comply with the Act.

(d) For evaluation of requests under paragraph (c) of this clause based on unreasonable cost, the following information and any applicable supporting data based on the survey of suppliers shall be included in the request:

FOREIGN AND DOMESTIC CONSTRUCTION
MATERIALS PRICE COMPARISON

Construction Material Description	Unit of Measure	Quantity	Price (Dollars)*
Item 1: Foreign construction material	_____	_____	
Domestic construction material	_____	_____	
Item 2: Foreign construction material	_____	_____	_____
Domestic construction material	_____	_____	_____

List name, address, telephone number, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.
Include other applicable supporting information.

* Include all delivery costs to the construction site and any applicable duty (whether or not a duty-free entry certificate is issued).

CLAUSE I.34 - RESERVED

CLAUSE I.35 - FAR 52.225-11 RESTRICTIONS ON CERTAIN FOREIGN PURCHASES (AUG 1998)

(a) Unless advance written approval of the Contracting Officer is obtained, the Contractor shall not acquire, for use in the performance of this contract, any supplies or services originating from sources within, or that were located in or transported from or through, countries whose products are banned from importation into the United States by

Executive Order or regulations of the Office of Foreign Assets Control, Department of the Treasury. Those countries include Cuba, Iran, Iraq, Libya, North Korea and Sudan.

(b) The Contractor shall not acquire for use in the performance of this contract any supplies or services from entities controlled by the Government of Iraq.

(c) The Contractor agrees to insert the provisions of this clause, including this paragraph (c), in all subcontracts hereunder.

CLAUSE I.36 - FAR 52.227-1 AUTHORIZATION AND CONSENT (JUL 1995) - ALTERNATE 1 (APRIL 1984)

(a) The Government authorizes and consents to all use and manufacture of any invention described in and covered by a United States patent in the performance of this contract or any subcontract at any tier.

(b) The Contractor agrees to include, and require inclusion of, this clause, suitably modified to identify the parties, in all subcontracts at any tier for supplies or services (including construction, architect-engineer Services, and materials, supplies, models, samples, and design or testing services expected to exceed the simplified acquisition threshold); however, omission of this clause from any subcontract, including those at or below the simplified acquisition threshold, does not affect this authorization and consent.

CLAUSE I.37- FAR 52.227-2 NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT (AUG 1996)

(1) The Contractor shall report to the Contracting Officer promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this contract of which the Contractor has knowledge.

(2) In the event of any claim or suit against the Government on account of any alleged patent or copyright infringement arising out of the performance of this contract or out of the use of any supplies furnished or work or services performed under this contract, the Contractor shall furnish to the Government when requested by the Contracting Officer, all evidence and information in possession of the Contractor pertaining to such suit or claim. Such evidence and information shall be furnished at the expense of the Government except where the Contractor has agreed to indemnify the Government.

(3) The Contractor agrees to include, and require inclusion of, this clause in all subcontracts at any tier for supplies or services (including construction and architect-engineer subcontracts and those for material, supplies, models, samples, or design or testing services) expected to exceed the simplified acquisition threshold at FAR 2.101.

CLAUSE I.38 - FAR 52.227-6 ROYALTY INFORMATION (APR 1984)

(a) Cost or charges for royalties.

When the response to this solicitation contains costs or charges for royalties totaling more then $250, the following information shall be included in the response relating to each separate item of royalty or license fee:

(1) Name and address of licensor.

(2) Date of license agreement.

(3) Patent numbers, patent application serial numbers, or other basis on which the royalty is payable.

(4) Brief description, including any part or model numbers of each contract item or component on which the royalty is payable.

(5) Percentage or dollar rate of royalty per unit.

(6) Unit price of contract item.

(7) Number of units.

(8) Total dollar amount of royalties.

(b) Copies of current licenses. In addition, if specifically requested by the Contracting Officer before execution of the contract, the offeror shall furnish a copy of the current license agreement and an identification of applicable claims of specific patents.

CLAUSE I.39 - FAR 52.227-10 FILING OF PATENT APPLICATIONS – CLASSIFIED SUBJECT MATTER (APR 1984)

(a) Before filing or causing to be filed a patent application in the United States disclosing any subject matter of this contract classified "Secret" or higher, the Contractor shall, citing the 30-day provision below, transmit the proposed application to the Contracting Officer. The Government shall determine whether, for reasons of national security, the application should be placed under an order of secrecy, sealed in accordance with the provision of 35 U.S.C. 181-188, or the issuance of a patent otherwise delayed under pertinent United States statutes or regulations. The Contractor shall observe any instructions of the Contracting Officer regarding the manner of delivery of the patent application to the United States Patent Office, but the Contractor shall not be denied the right to file the application. If the Contracting Officer shall not have given any such instructions within 30 days from the date of mailing or other transmittal of the proposed application, the Contractor may file the application.

(b) Before filing a patent application in the United States disclosing any subject matter of this contract classified "Confidential," the Contractor shall furnish to the Contracting Officer a copy of the application for Government determination whether, for reasons of national security, the application should be placed under an order of secrecy or the issuance of a patent should be otherwise delayed under pertinent United States statutes or regulations.

(c) Where the subject matter of this contract is classified for reasons of security, the Contractor shall not file, or cause to be filed, in any country other than in the United States as provided in paragraphs (a) and (b) of this clause, an application or registration for a patent containing any of the subject matter of this contract without first obtaining written approval of the Contracting Officer.

(d) When filing any patent application coming within the scope of this clause, the Contractor shall observe all applicable security regulations covering the transmission of classified subject matter and shall promptly furnish to the Contracting Officer the serial number, filing date, and name of the country of any such application. When transmitting the application to the United States Patent Office, the Contractor shall by separate letter identify by agency and number the contract or contracts that require security classification markings to be placed on the application.

(e) The Contractor agrees to include, and require the inclusion of, this clause in all subcontracts at any tier that cover or are likely to cover classified subject matter.

CLAUSE I.40 - FAR 52.230-2 COST ACCOUNTING STANDARDS (APR 1998)

(a) Unless the contract is exempt under 48 CFR 9903.201-1 and 9903.201-2, the provisions of 48 CFR, Part 9903 are incorporated herein by reference and the Contractor, in connection with this contract, shall --

(1) (CAS-covered Contracts Only) By submission of a Disclosure Statement, disclose, in writing, the Contractor's cost accounting practices as required by 48 CFR 9903.202-1 through 9903.202-5, including methods of distinguishing direct costs from indirect costs and the basis used for allocating indirect costs. The practices disclosed for this contract shall be the same as the practices currently disclosed and applied on all other contracts and subcontracts being performed by the Contractor and which contain a Cost Accounting Standards (CAS) clause. If the Contractor has notified the Contracting Officer that the Disclosure Statement contains trade secrets and commercial or financial information which is privileged and confidential, the Disclosure Statement shall be protected and shall not be released outside of the Government.

(2) Follow consistently the Contractor's cost accounting practices in accumulating and reporting contract performance cost data concerning this contract. If any

change in cost accounting practices is made for the purposes of any contract or subcontract subject to CAS requirements, the change must be applied prospectively to this contract and the Disclosure Statement must be amended accordingly. If the contract price or cost allowance of this contract is affected by such changes, adjustment shall be made in accordance with subparagraph (a)(4) or (a)(5) of this Clause, as appropriate.

(3) Comply with all CAS, including any modifications and interpretations indicated thereto contained in 48 CFR, Part 9904, in effect on the date of award of this contract or, if the Contractor has submitted cost or pricing data, on the date of final agreement on price as shown on the Contractor's signed certificate of current cost or pricing data. The Contractor shall also comply with any CAS (or modifications to CAS) which hereafter become applicable to a contract or subcontract of the Contractor. Such compliance shall be required prospectively from the date of applicability to such contract or subcontract.

(4) (i) Agree to an equitable adjustment as provided in the Changes clause of this contract if the contract cost is affected by a change which, pursuant to subparagraph (a)(3) of this Clause, the Contractor is required to make to the Contractor's established cost accounting practices.

(ii) Negotiate with the Contracting Officer to determine the terms and conditions under which a change may be made to a cost accounting practice, other than a change made under other provisions of subparagraph (a)(4) of this Clause; provided that no agreement may be made under this provision that will increase costs paid by the United States.

(iii) When the Parties agree to a change to a cost accounting practice, other than a change under subdivision (a)(4)(i) of this Clause, negotiate an equitable adjustment as provided in the Changes clause of this contract.

(5) Agree to an adjustment of the contract price or cost allowance, as appropriate, if the Contractor or a subcontractor fails to comply with an applicable Cost Accounting Standard, or to follow any cost accounting practice consistently and such failure results in any increased costs paid by the United States. Such adjustment shall provide for recovery of the increased costs to the United States, together with interest thereon computed at the annual rate established under Section 6621 of the Internal Revenue Code of 1986 (26 U.S.C. 6621) for such period, from the time the payment by the United States was made to the time the adjustment is effected. In no case shall the Government recover costs greater than the increased cost to the Government, in the aggregate, on the relevant contracts subject to the price adjustment, unless the Contractor made a change in its cost accounting practices of which it was aware or should have been aware at the time of price negotiations and which it failed to disclose to the Government.

(b) If the Parties fail to agree whether the Contractor or a subcontractor has complied with an applicable CAS in 48 CFR Part 9904 or a CAS rule or regulation in 48 CFR Part 9903 and as to any cost adjustment demanded by the United States, such failure to agree will constitute a dispute under the Contract Disputes Act (41 U.S.C. 601).

(c) The Contractor shall permit any authorized representatives of the Government to examine and make copies of any documents, papers, or records relating to compliance with the requirements of this clause.

(d) The Contractor shall include in all negotiated subcontracts which the Contractor enters into, the substance of this clause, except paragraph (b), and shall require such inclusion in all other subcontracts, of any tier, including the obligation to comply with all CAS in effect on the subcontractor's award date or if the subcontractor has submitted cost or pricing data, on the date of final agreement on price as shown on the subcontractor's signed Certificate of Current Cost or Pricing Data. If the subcontract is awarded to a business unit which pursuant to 48 CFR 9903.201-2 is subject to other types of CAS coverage, the substance of the applicable clause set forth in subsection 30.201-4 of the Federal Acquisition Regulation shall be inserted. This requirement shall apply only to negotiated subcontracts in excess of $500,000, except that the requirement shall not apply to negotiated subcontracts otherwise exempt from the requirement to include a CAS clause as specified in 48 CFR 9903.201-1.

CLAUSE I.41 - FAR 52.230-6 ADMINISTRATION OF COST ACCOUNTING STANDARDS (APR 1996)

For the purpose of administering the Cost Accounting Standards (CAS) requirements under this contract, the Contractor shall take the steps outlined in paragraphs (a) through (g) of this clause:

(a) Submit to the Contracting Officer a description of any cost accounting practice change, the total potential impact of the change on contracts containing a CAS clause, and a general dollar magnitude of the change which identifies the potential shift of costs between CAS-covered contracts by contract type (i.e., firm-fixed-price, incentive, cost-plus-fixed-fee, etc.) and other Contractor business activity. As related to CAS-covered contracts, the analysis should identify the potential impact on funds of the various Agencies/Departments (i.e., Department of Energy, National Aeronautics and Space Administration, Army, Navy, Air Force, other Department of Defense, other Government) as follows:

(1) For any change in cost accounting practices required in accordance with subparagraph (a)(3) and subdivision (a)(4)(i) of the clause at FAR 52.230-2, Cost Accounting Standards; or subparagraph (a)(3) and subdivisions (a)(4)(i) or (a)(4)(iv) of the Clause at FAR 52.230-5, Cost Accounting Standards - Educational Institution, within sixty (60) days (or such other date as may be mutually agreed to) after award of a contract requiring this change.

(2) For any change in cost accounting practices proposed in accordance with subdivision (a)(4)(ii) or (iii) of the clauses at FAR 52.230-2, Cost Accounting Standards and FAR 52.230-5, Cost Accounting Standards - Educational Institution, or with subparagraph (a)(3) of the clause at FAR 52.230-3, Disclosure and Consistency of Cost Accounting Practices, not less than sixty (60) days (or such other date as may be mutually agreed to) before the effective date of the proposed change.

(3) For any failure to comply with an applicable CAS or to follow a disclosed practice (as contemplated by subparagraph (a)(5) at FAR 52.230-2, Cost Accounting Standards and FAR 52.230-5, Cost Accounting Standards - Educational Institution, or by subparagraph (a)(4) at FAR 52.230-3, Disclosure and Consistency of Cost Accounting Practices):

(i) Within sixty (60) days (or such other date as may be mutually agreed to) after the date of agreement with the initial finding of noncompliance, or

(ii) In the event of Contractor disagreement with the initial finding of noncompliance, within sixty (60) days of the date the Contractor is notified by the Contracting Officer of the determination of noncompliance.

(b) After an ACO or cognizant Federal agency official determination of materiality, submit a cost impact proposal in the form and manner specified by the Contracting Officer within sixty (60) days (or such other date as may be mutually agreed to) after the date of determination of the adequacy and compliance of a change submitted pursuant to paragraph (a) of this clause. The cost impact proposal shall be in sufficient detail to permit evaluation, determination, and negotiation of the cost impact upon each separate CAS-covered contract and subcontract.

(1) Cost impact proposals submitted for changes in cost accounting practices required in accordance with subparagraph (a)(3) and subdivision (a)(4)(i) of the clause at FAR 52.230-2, Cost Accounting Standards; or subparagraph (a)(3) and subdivisions (a)(4)(i) or (a)(4)(iv) of the clause at FAR 52.230-5, Cost Accounting Standards - Educational Institution; shall identify the applicable standard or cost principle and all contracts and subcontracts containing the clauses entitled, Cost Accounting Standards or Cost Accounting Standards - Educational Institution, which have an award date before the effective date of that standard or cost principle.

(2) Cost impact proposals submitted for any change in cost accounting practices proposed in accordance with subdivisions (a)(4)(ii) or (iii) of the clauses at FAR 52.230-2, Cost Accounting Standards, and FAR 52-230-5, Cost Accounting Standards - Educational Institution; or with subparagraph (a)(3) of the clause at FAR 52.230-3, Disclosure and Consistency of Cost Accounting Practices; shall identify all contracts and subcontracts containing the clauses at FAR 52.230-2,

Cost Accounting Standards, FAR 52.230-5, Cost Accounting Standards - Educational Institution, and FAR 52.230-3, Disclosure and Consistency of Cost Accounting Practices.

(3) Cost impact proposals submitted for failure to comply with an applicable CAS or to follow a disclosed practice as contemplated by subparagraph (a)(5) of the clauses at FAR 52.230-2, Cost Accounting Standards and FAR 52.230-5, Cost Accounting Standards - Educational Institution; or by subparagraph (a)(4) of the clause at FAR 52.230-3, Disclosure and Consistency of Cost Accounting Practices, shall identify the cost impact on each separate CAS covered contract from the date of failure to comply until the noncompliance is corrected.

(c) If the submissions required by paragraphs (a) and (b) of this clause are not submitted within the specified time, or any extension granted by the Contracting Officer, an amount not to exceed 10 percent of each subsequent amount determined payable related to the Contractor's CAS-covered prime contracts, up to the estimated general dollar magnitude of the cost impact, may be withheld until such time as the required submission has been provided in the form and manner specified by the Contracting Officer.

(d) Agree to appropriate contract and subcontract amendments to reflect adjustments established in accordance with subparagraphs (a)(4) and (a)(5) of the clauses at FAR 52.230-2 and 52.230-5 or with subparagraphs (a)(3) or (a)(4) of the Disclosure and Consistency of Cost Accounting Practices clause at FAR 52.230-3.

(e) For all subcontracts subject to the clauses at FAR 52.230-2, 52.230-3, or 52-230-5 --

(1) So state in the body of the subcontract, in the letter of award, or in both (self-deleting clauses shall not be used); and

(2) Include the substance of this clause in all negotiated subcontracts. In addition, within 30 days after award of the subcontract, submit the following information to the Contractor's cognizant contract administration office for transmittal to the contract administrative office cognizant of the subcontractor's facility:

(i) Subcontractor's name and subcontract number.

(ii) Dollar amount and date of award.

(iii) Name of Contractor making the award.

(iv) Any changes the subcontractor has made or proposes to make to cost accounting practices that affect prime contracts or subcontracts containing the clauses at FAR 52.230-2, 52-230-3, or 52-230-5, unless these changes have already been reported.

(f) Notify the Contracting Officer, in writing, of any adjustments required to subcontracts under this contract and agree to an adjustment, based on them, to this contract price or estimated cost and fee. This notice is due within thirty (30) days after proposed subcontract adjustments are received and shall include a proposal for adjusting the higher-tier subcontract or the prime contract appropriately.

(g) For subcontracts containing the CAS clause, require the subcontractor to comply with all Standards in effect on the date of award or of final agreement on price, as shown on the subcontractor's signed Certificate of Current Cost or Pricing Data, whichever is earlier.

CLAUSE I.42 - FAR 52.232-17 INTEREST (JUN 1996)

(a) Except as otherwise provided in this contract under a Price Reduction for Defective Cost or Pricing Data clause or a Cost Accounting Standards clause, all amounts that become payable by the Contractor to the Government under this contract (net of any applicable tax credit under the Internal Revenue Code (26 U.S.C. 1481)) shall bear simple interest from the date due until paid unless paid within 30 days of becoming due. The interest rate shall be the interest rate established by the Secretary of the Treasury as provided in Section 12 of the Contract Disputes Act of 1978 (Public Law 95-563), which is applicable to the period in which the amount becomes due, as provided in paragraph (b) of this clause, and then at the rate applicable for each six-month period as fixed by the Secretary until the amount is paid.

(b) Amounts shall be due at the earliest of the following dates:

(1) The date fixed under this contract.

(2) The date of the first written demand for payment consistent with this contract, including any demand resulting from a default termination.

(3) The date the Government transmits to the Contractor a proposed supplemental agreement to confirm completed negotiations establishing the amount of debt.

(4) If this contract provides for revision of prices, the date of written notice to the Contractor stating the amount of refund payable in connection with a pricing proposal or a negotiated pricing agreement not confirmed by contract modification.

(c) The interest charge made under this clause may be reduced under the procedures prescribed in 32.614-2 of the Federal Acquisition Regulation in effect on the date of this contract.

CLAUSE I.43 - FAR 52.232-18 AVAILABILITY OF FUNDS (APR 1984)

Funds are not presently available for this contract. The Government's obligation under this contract is contingent upon the availability of appropriated funds from which payment for contract purposes can be made. No legal liability on the part of the Government for any payment may arise until funds are made available to the Contracting Officer for this contract and until the Contractor receives notice of such availability, to be confirmed in writing by the Contracting Officer.

CLAUSE I.43A - FAR 52.232-33 PAYMENT BY ELECTRONIC TRANSFER – CENTRAL CONTRACTOR REGISTRATION (MAY 1999)

(a) *Method of payment*.

(1) All payments by the Government under this contract shall be made by electronic funds transfer (EFT), except as provided in paragraph (a)(2) of this clause. As used in this clause, the term "EFT" refers to the funds transfer and may also include the payment information transfer.

(2) In the event the Government is unable to release one or more payments by EFT, the Contractor agrees to either--

(i) Accept payment by check or some other mutually agreeable method of payment; or

(ii) Request the Government to extend the payment due date until such time as the Government can make payment by EFT (but see paragraph (d) of this clause).

(b) *Contractor's EFT information*. The Government shall make payment to the Contractor using the EFT information contained in the Central Contractor Registration (CCR) database. In the event that the EFT information changes, the Contractor shall be responsible for providing the updated information to the CCR database.

(c) *Mechanisms for EFT payment*. The Government may make payment by EFT through either the Automated Clearing House (ACH) network, subject to the rules of the National Automated Clearing House Association, or the Fedwire Transfer System. The rules governing Federal payments through the ACH are contained in 31 CFR part 210.

(d) *Suspension of payment*. If the Contractor's EFT information in the CCR database is incorrect, then the Government need not make payment to the Contractor under this contract until correct EFT information is entered into the CCR database; and any invoice or contract financing request shall be deemed not to be a proper invoice for the purpose of prompt payment under this contract. The

prompt payment terms of the contract regarding notice of an improper invoice and delays in accrual of interest penalties apply.

(e) *Contractor EFT arrangements*. If the Contractor has identified multiple payment receiving points (*i.e*., more than one remittance address and/or EFT information set) in the CCR database, and the Contractor has not notified the Government of the payment receiving point applicable to this contract, the Government shall make payment to the first payment receiving point (EFT information set or remittance address as applicable) listed in the CCR database.

(e) *Liability for uncompleted or erroneous transfers*.

(1) If an uncompleted or erroneous transfer occurs because the Government used the Contractor's EFT information incorrectly, the Government remains responsible for--

(i) Making a correct payment;

(ii) Paying any prompt payment penalty due; and

(iii) Recovering any erroneously directed funds.

(2) If an uncompleted or erroneous transfer occurs because the Contractor's EFT information was incorrect, or was revised within 30 days of Government release of the EFT payment transaction instruction to the Federal Reserve System, and--

(i) If the funds are no longer under the control of the payment office, the Government is deemed to have made payment and the Contractor is responsible for recovery of any erroneously directed funds; or

(ii) If the funds remain under the control of the payment office, the Government shall not make payment, and the provisions of paragraph (d) of this clause shall apply.

(g) *EFT and prompt payment*. A payment shall be deemed to have been made in a timely manner in accordance with the prompt payment terms of this contract if, in the EFT payment transaction instruction released to the Federal Reserve System, the date specified for settlement of the payment is on or before the prompt payment due date, provided the specified payment date is a valid date under the rules of the Federal Reserve System.

(h) *EFT and assignment of claims*. If the Contractor assigns the proceeds of this contract as provided for in the assignment of claims terms of this contract, the Contractor shall require as a condition of any such assignment, that the assignee shall register in the CCR database and shall be paid by EFT in accordance with the terms of this clause. In all respects, the requirements of this clause shall apply to the assignee as if it were the Contractor. EFT information that shows the

ultimate recipient of the transfer to be other than the Contractor, in the absence of a proper assignment of claims acceptable to the Government, is incorrect EFT information within the meaning of paragraph (d) of this clause.

(i) *Liability for change of EFT information by financial agent*. The Government is not liable for errors resulting from changes to EFT information made by the Contractor's financial agent.

(j) *Payment information*. The payment or disbursing office shall forward to the Contractor available payment information that is suitable for transmission as of the date of release of the EFT instruction to the Federal Reserve System. The Government may request the Contractor to designate a desired format and method(s) for delivery of payment information from a list of formats and methods the payment office is capable of executing. However, the Government does not guarantee that any particular format or method of delivery is available at any particular payment office and retains the latitude to use the format and delivery method most convenient to the Government. If the Government makes payment by check in accordance with paragraph (a) of this clause, the Government shall mail the payment information to the remittance address contained in the CCR database.

CLAUSE I.44 - FAR 52.233-1 DISPUTES (OCT 1995) (ALTERNATE I) (DEC 1991)

(a) This contract is subject to the Contract Disputes Act of 1978, as amended (41 U.S.C. 601-613).

(b) Except as provided in the Act, all disputes arising under or relating to this contract shall be resolved under this clause.

(c) "Claim", as used in this clause, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to this contract. A claim arising under a contract, unlike a claim relating to that contract, is a claim that can be resolved under a contract clause that provides for the relief sought by the claimant. However, a written demand or written assertion by the Contractor seeking the payment of money exceeding $100,000 is not a claim under the Act until certified as required by subparagraph (d)(2) below. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim under the Act. The submission may be converted to a claim under the Act, by complying with the submission and certification requirements of this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

(d) (1) A claim by the Contractor shall be made, in writing, and unless otherwise stated in the contract, submitted within 6 years after accrual of the claim to the

Contracting Officer for a written decision. A claim by the Government against the Contractor shall be subject to a written decision by the Contracting Officer.

(2) (i) The Contractor shall provide the certification specified in subparagraph (d)(2)(iii) of this clause when submitting any claim --

(A) Exceeding $100,000; or

(B) Regardless of the amount claimed, when using --

(1) Arbitrations conducted pursuant to 5 U.S.C. 575-580; or

(2) Any other alternative means of dispute resolution (ADR) technique that the agency elects to handle in accordance with the Administrative Dispute Resolution Act (ADRA).

(ii) The certification requirement does not apply to issues in controversy that have not been submitted as all or part of a claim.

(iii) The certification shall state as follows: "I certify that the claim is made in good faith; that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the contract adjustment for which the Contractor believes the Government is liable; and that I am duly authorized to certify the claim on behalf of the Contractor".

(3) The certification may be executed by any person duly authorized to bind the Contractor with respect to the claim.

(e) For Contractor claims of $100,000 or less, the Contracting Officer must, if requested in writing by the Contractor, render a decision within sixty (60) days of the request. For Contractor-certified claims over $100,000, the Contracting Officer must, within sixty (60) days, decide the claim or notify the Contractor of the date by which the decision will be made.

(f) The Contracting Officer's decision shall be final unless the Contractor appeals or files a suit as provided in the Act.

(g) If the claim by the Contractor is submitted to the Contracting Officer or a claim by the Government is presented to the Contractor, the Parties, by mutual consent, may agree to use ADR. If the Contractor refuses an offer for alternative dispute resolution, the Contractor shall inform the Contracting Officer, in writing, of the Contractor's specific reasons for rejecting the request. When using arbitration conducted pursuant to 5 U.S.C. 575-580, or when using any other ADR technique that the agency elects to handle in accordance with the ADRA, any claim, regardless of amount, shall be

accompanied by the certification described in subparagraph (d)(2)(iii) of this clause, and executed in accordance with subparagraph (d)(3) of this clause.

(h) The Government shall pay interest on the amount found due and unpaid from (1) the date the Contracting Officer receives the claim (certified, if required), or (2) the date payment otherwise would be due, if that date is later, until the date of payment. With regard to claims having defective certifications, as defined in FAR 33.201, interest shall be paid from the date that the Contracting Officer initially receives the claim. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury as provided in the Act, which is applicable to the period during which the Contracting Officer receives the claim and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary during the pendency of the claim.

(i) The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under or relating to the contract, and comply with any decision of the Contracting Officer.

CLAUSE I.45 - FAR 52.233-3 PROTEST AFTER AWARD (AUG 1996) - ALTERNATE I (JUNE 1985)

(a) Upon receipt of a notice of protest (as defined in 33.101 of the FAR) the Contracting Officer may, by written order to the Contractor, direct the Contractor to stop performance of the work called for by this contract. The order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Upon receipt of the final decision in the protest, the Contracting Officer shall either --

(1) Cancel the stop-work order; or

(2) Terminate the work covered by the order as provided in the Termination clause of this contract.

(b) If a stop-work order issued under this clause is cancelled either before or after a final decision in the protest, the Contractor shall resume work. The Contracting Officer shall make an equitable adjustment in the delivery schedule, the estimated cost, the fee, or a combination thereof, and in any other terms of the contract that may be affected, and the contract shall be modified, in writing, accordingly, if -

(1) The stop-work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this contract; and

(2) The Contractor asserts its right to an adjustment within thirty (30) days after the end of the period of work stoppage; provided, that if the Contracting Officer decides the facts justify the action, the Contracting Officer may receive and act upon a proposal at any time before final payment under this contract.

(c) If a stop-work order is not cancelled and the work covered by the order is terminated for the convenience of the Government, the Contracting Officer shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.

(d) If a stop-work order is not cancelled and the work covered by the order is terminated for default, the Contracting Officer shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.

(e) The Government's rights to terminate this contract at any time are not affected by action taken under this Clause.

(f) If, as the result of the Contractor's intentional or negligent misstatement, misrepresentation, or miscertification, a protest related to this contract is sustained, and the Government pays costs, as provided in FAR 33.102(b)(2) or 33.104(h)(1), the Government may require the Contractor to reimburse the Government the amount of such costs.

CLAUSE I.45A - FAR 52.237-2 PROTECTION OF GOVERNMENT BUILDINGS, EQUIPEMENT AND VEGETATION (APRIL 1984)

The Contractor shall use reasonable care to avoid damaging existing buildings, equipment, and vegetation on the Government installation. If the Contractor's failure to use reasonable care causes damage to any of this property, the Contractor shall replace or repair the damage at no expense to the Government as the Contracting Officer directs. If the Contractor fails or refuses to make such repair or replacement, the Contractor shall be liable for the cost, which may be deducted from the contract price.

CLAUSE I.46 - FAR 52.237-3 CONTINUITY OF SERVICES (JAN 1991)

(a) The Contractor recognizes that the services under this contract are vital to the Government and must be continued without interruption and that, upon contract expiration, a successor, either the Government or another Contractor, may continue them. The Contractor agrees to (1) furnish phase-in training, and (2) exercise its best efforts and cooperation to effect an orderly and efficient transition to a successor.

(b) The Contractor shall, upon the Contracting Officer's written notice, (1) furnish phase-in, phase-out services for up to ninety (90) days after this contract expires and (2) negotiate in good faith a plan with a successor to determine the nature and extent of phase-in, phase-out services required. The plan shall specify a training program and a date for transferring responsibilities for each division of work described in the plan, and shall be

subject to the Contracting Officer's approval. The Contractor shall provide sufficient experienced personnel during the phase-in, phase-out period to ensure that the services called for by this contract are maintained at the required level of proficiency.

(c) The Contractor shall allow as many personnel as practicable to remain on the job to help the successor maintain the continuity and consistency of the services required by this contract. The Contractor also shall disclose necessary personnel records and allow the successor to conduct on-site interviews with these employees. If selected employees are agreeable to the change, the Contractor shall release them at a mutually agreeable date and negotiate transfer of their earned fringe benefits to the successor.

(d) The Contractor shall be reimbursed for all reasonable phase-in, phase-out costs (i.e., costs incurred within the agreed period after contract expiration that result from phase-in, phase-out operations) and a fee (profit) not to exceed a pro rata portion of the fee (profit) under this contract.

CLAUSE I.47 - FAR 52.242-1 NOTICE OF INTENT TO DISALLOW COSTS (APR 1984)

(a) Notwithstanding any other clause of this contract --

(1) The Contracting Officer may, at any time, issue to the Contractor a written notice of intent to disallow specified costs incurred or planned for incurrence under this contract that have been determined not to be allowable under the contract terms; and

(2) The Contractor may, after receiving a notice under subparagraph (1) above, submit a written response to the Contracting Officer, with justification for allowance of the costs. If the Contractor does respond within sixty (60) days, the Contracting Officer shall, within sixty (60) days of receiving the response, either make a written withdrawal of the notice or issue a written decision.

(b) Failure to issue a notice under this Notice of Intent to Disallow Costs clause shall not affect the Government's rights to take exception to incurred costs.

CLAUSE I.47A - FAR 52.242-3 PENALTIES FOR UNALLOWABLE COSTS (OCT 1995)

(a) *Definition.* "Proposal," as used in this clause, means either--

(1) A final indirect cost rate proposal submitted by the Contractor after the expiration of its fiscal year which--

(i) Relates to any payment made on the basis of billing rates; or

(ii) Will be used in negotiating the final contract price; or

(2) The final statement of costs incurred and estimated to be incurred under the Incentive Price Revision clause (if applicable), which is used to establish the final contract price.

(b) Contractors which include unallowable indirect costs in a proposal may be subject to penalties. The penalties are prescribed in 10 U.S.C. 2324 or 41 U.S.C. 256, as applicable, which is implemented in Section 42.709 of the Federal Acquisition Regulation (FAR).

(c) The Contractor shall not include in any proposal any cost which is unallowable, as defined in Part 31 of the FAR, or an executive agency supplement to Part 31 of the FAR.

(d) If the Contracting Officer determines that a cost submitted by the Contractor in its proposal is expressly unallowable under a cost principle in the FAR, or an executive agency supplement to the FAR, that defines the allowability of specific selected costs, the Contractor shall be assessed a penalty equal to--

(1) The amount of the disallowed cost allocated to this contract; plus

(2) Simple interest, to be computed--

(i) On the amount the Contractor was paid (whether as a progress or billing payment) in excess of the amount to which the Contractor was entitled; and

(ii) Using the applicable rate effective for each six-month interval prescribed by the Secretary of the Treasury pursuant to Pub. L. 92-41 (85 Stat. 97).

(e) If the Contracting Officer determines that a cost submitted by the Contractor in its proposal includes a cost previously determined to be unallowable for that Contractor, then the Contractor will be assessed a penalty in an amount equal to two times the amount of the disallowed cost allocated to this contract.

(f) Determinations under paragraphs (d) and (e) of this clause are final decisions within the meaning of the Contract Disputes Act of 1978 (41 U.S.C. 601, *et seq*.).

(g) Pursuant to the criteria in FAR 42.709-5, the Contracting Officer may waive the penalties in paragraph (d) or (e) of this clause.

(h) Payment by the Contractor of any penalty assessed under this clause does not constitute repayment to the Government of any unallowable cost which has been paid by the Government to the Contractor.

CLAUSE I.48 - FAR 52.242-13 BANKRUPTCY (JUL 1995)

In the event the Contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the Contractor agrees to furnish, by certified mail, written notification of the bankruptcy to the Contracting Officer responsible for administering the contract. This notification shall be furnished within five (5) days of the initiation of the proceedings relating to bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, and a listing of Government contract numbers and contracting offices for all Government contracts against which final payment has not been made. This obligation remains in effect until final payment under this contract.

CLAUSE I.49 - FAR 52.244-5 COMPETITION IN SUBCONTRACTING (DEC 1996)

(a) The Contractor shall select subcontractors (including suppliers) on a competitive basis to the maximum practical extent consistent with the objectives and requirements of the contract.

(b) If the Contractor is an approved mentor under the Department of Defense Pilot Mentor-Protege Program (Pub. L. 101-510, section 831 as amended), the Contractor may award subcontracts under this contract on a noncompetitive basis to its proteges.

CLAUSE I.50 - FAR 52.244-6 SUBCONTRACTS FOR COMMERCIAL ITEMS AND COMMERCIAL COMPONENTS (APR 1998)

(a) Definitions

"Commercial item", as used in this clause, has the meaning contained in the clause at 52.202-1, Definitions.

"Subcontract", as used in this clause, includes a transfer of commercial items between divisions, subsidiaries, or affiliates of the Contractor or subcontractor at any tier.

(b) To the maximum extent practicable, the Contractor shall incorporate, and require its subcontractors at all tiers to incorporate, commercial items or nondevelopmental items as components of items to be supplied under this contract.

(c) Notwithstanding any other clause of this contract, the Contractor is not required to include any FAR provision or clause, other than those listed below to the extent they are applicable and as may be required to establish the reasonableness of prices under Part 15, in a subcontract at any tier for commercial items or commercial components:

(1) 52.222-26 - Equal Opportunity (E.O. 11246);

(2) 52.222-35 - Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era (38 U.S.C. 4212(a));

(3) 52.222-36 - Affirmative Action for Handicapped Workers (29 U.S.C. 793); and

(4) 52.247-64 - Preference for Privately-Owned U.S. Flagged Commercial Vessels (46 U.S.C. 1241)(flowdown not required for subcontracts awarded beginning May 1, 1996).

(d) The Contractor shall include the terms of this clause, including this paragraph (d), in subcontracts awarded under this contract.

CLAUSE I.51 - FAR 52.247-1 COMMERCIAL BILL OF LADING NOTATIONS (APR 1984)

If the Contracting Officer authorizes supplies to be shipped on a commercial bill of lading and the Contractor will be reimbursed these transportation costs as direct allowable costs, the Contractor shall ensure before shipment is made that the commercial shipping documents are annotated with either of the following notations, as appropriate:

(a) If the Government is shown as the consignor or the consignee, the annotation shall be: "Transportation is for the U.S. Department of Energy and the actual total transportation charges paid to the carrier(s) by the consignor or consignee are assignable to, and shall be reimbursed by, the Government,"

(b) If the Government is not shown as the consignor or the consignee, the annotation shall be: "Transportation is for the U.S. Department of Energy and the actual total transportation charges paid to the carrier(s) by the consignor or consignee shall be reimbursed by the Government, pursuant to cost-reimbursement Contract No. DE-AC05-84ER-40150. This may be confirmed by contacting the “U.S. Department of Energy, Jefferson Lab Site Office, 12000 Jefferson Avenue, Newport News, Virginia 23606.”

CLAUSE I.52 - FAR 52.247-63 PREFERENCE FOR U.S. FLAG AIR CARRIERS (JAN 1997)

(a) "International air transportation", as used in this clause, means transportation by air between a place in the United States and a place outside the United States or between two places both of which are outside the United States.

"United States", as used in this clause, means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and possessions of the United States.

"U.S.-Flag air carrier,” as used in this clause, means an air carrier holding a certificate under 49 U.S.C. Chapter 411.

(b) Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118)(Fly America-Act) requires that all Federal agencies and Government Contractors and subcontractors use U.S.-flag air carriers for U.S. Government-financed international air transportation of personnel (and their personal effects) or property, to the extent that service by those carriers is available. It requires the Comptroller General of the United States, in the absence of satisfactory proof of the necessity for foreign-flag air transportation, to disallow expenditures from funds, appropriated or otherwise established for the account of the United States, for international air transportation secured aboard a foreign-flag air carrier if a U.S.-flag air carrier is available to provide such services.

(c) The Contractor agrees, in performing work under this contract, to use U.S.-flag air carriers for international air transportation of personnel (and their personal effects) or property to the extent that service by those carriers is available.

(d) In the event that the Contractor selects a carrier other than a U.S.-flag air carrier for international air transportation, the Contractor shall include a statement on vouchers involving such transportation essentially as follows:

> STATEMENT OF UNAVAILABILITY OF U.S.-FLAG AIR CARRIERS
> International air transportation of persons (and their personal effects) or property by U.S.-flag air carrier was not available or it was necessary to use foreign-flag air carrier service for the following reasons (see Section 47.403 of the Federal Acquisition Regulation):
>
> [State reasons]:
>
> End of Statement)

(e) The Contractor shall include the substance of this clause, including this paragraph (e), in each subcontract or purchase order under this contract that may involve international air transportation.

CLAUSE I.53 - FAR 52.247-64 PREFERENCE FOR PRIVATELY-OWNED U.S. FLAG COMMERCIAL VESSELS (JUN 1997)

(a) The Cargo Preference Act of 1954 (46 U.S.C. 1241(b)) requires that Federal departments and agencies shall transport in privately owned U.S.-flag commercial vessels at least 50 percent of the gross tonnage of equipment, materials, or commodities that may be transported in ocean vessels (computed separately for dry bulk carriers, dry cargo liners, and tankers). Such transportation shall be accomplished when any equipment, materials, or commodities, located within or outside the United States, that may be transported by ocean vessel are:

(1) Acquired for a U.S. Government agency account;

(2) Furnished to, or for the account of, any foreign nation without provision for reimbursement;

(3) Furnished for the account of a foreign nation in connection with which the United States advances funds or credits, or guarantees the convertibility of foreign currencies; or

(4) Acquired with advance of funds, loans, or guarantees made by or on behalf of the United States.

(b) The Contractor shall use privately owned U.S.-flag commercial vessels to ship at least 50 percent of the gross tonnage involved under this contract (computed separately for dry bulk carriers, dry cargo liners, and tankers) whenever shipping any equipment, materials, or commodities under the conditions set forth in paragraph (a) above, to the extent that such vessels are available at rates that are fair and reasonable for privately owned U.S.-flag commercial vessels.

(c) (1) The Contractor shall submit one legible copy of a rated onboard ocean bill of lading for each shipment to both (i) the Contracting Officer and (ii) the Office of Cargo Preference, Maritime Administration (MAR-590), 400 Seventh Street, SW, Washington, D.C. 20590. Subcontractor bills of lading shall be submitted through the prime Contractor.

(2) The Contractor shall furnish these bill of lading copies (i) within twenty (20) working days of the date of loading for shipments originating in the United States or (ii) within thirty (30) working days for shipments originating outside the United States. Each bill of lading copy shall contain the following information:

(A) Sponsoring U.S. Government agency.

(B) Name of vessel.

(C) Vessel flag of registry.

(D) Date of loading.

(E) Port of loading.

(F) Port of final discharge.

(G) Description of commodity.

(H) Gross weight in pounds and cubic feet if available.

(I) Total ocean freight revenue in U.S. dollars.

(d) Except for contracts at or below the simplified acquisition threshold, the Contractor shall insert the substance of this clause, including this paragraph (d), in all subcontracts or purchase orders under this contract.

(e) The requirement in paragraph (a) does not apply to:

(1) Contracts at or below the simplified acquisition threshold;

(2) Cargoes carried in vessels of the Panama Canal Commission or as required or authorized by law or treaty;

(3) Ocean transportation between foreign countries of supplies purchased with foreign currencies made available, or derived from funds that are made available, under the Foreign Assistance Act of 1961 (22 U.S.C. 2353); and

(4) Shipments of classified supplies when the classification prohibits the use of non-Government vessels.

(f) Guidance regarding fair and reasonable rates for privately owned U.S.-flag commercial vessels may be obtained from the Office of Costs and Rates, Maritime Administration, 400 Seventh Street, SW, Washington, D.C. 20590, Phone: (202) 366-4610.

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CLAUSE I.54 - FAR 52.247-67 SUBMISSION OF COMMERCIAL TRANSPORTATION BILLS TO THE GENERAL SERVICES ADMINISTRATION FOR AUDIT (JUN 1997)

(a) (1) In accordance with paragraph (a)(2) of this clause, the Contractor shall submit to the General Services Administration (GSA) for audit, legible copies of all paid freight bills/invoices, commercial bills of lading (CBL's), passenger coupons, and other supporting documents for transportation services on which the United States will assume freight charges that were paid --

(i) By the Contractor under a cost-reimbursement contract; and

(ii) By a first-tier subcontractor under a cost-reimbursement subcontract thereunder.

(2) Cost-reimbursement Contractors shall only submit for audit those CBL's with freight shipment charges exceeding $50.00. Bills under $50.00 shall be retained on-site by the Contractor and made available for GSA on-site audits. This exception only applies to freight shipment bills and is not intended to apply to bills and invoices for any other transportation services.

(b) The Contractor shall forward copies of paid freight bills/invoices, CBL's, passenger coupons, and supporting documents as soon as possible following the end of the month, in one package to the:

General Services Administration
Attn: FWA
1800 F Street, NW
Washington, DC 20405

The Contractor shall include the paid freight bills/invoices, CBL's, passenger coupons, and supporting documents for first-tier subcontractors under a cost-reimbursement contract. If the inclusion of the paid freight bills/invoices, CBL's, passenger coupons, and supporting documents for any subcontractor in the shipment is not practicable, the documents may be forward to GSA in a separate package.

(c) Any original transportation bills or other documents requested by GSA shall be forwarded promptly by the Contractor to GSA. The Contractor shall ensure that the name of the contracting agency is stamped or written on the face of the bill before sending it to GSA.

(d) A statement prepared in duplicate by the Contractor shall accompany each shipment of transportation documents. GSA will acknowledge receipt of the shipment by signing and returning the copy of the statement. The statement shall show --

(1) The name and address of the Contractor;

(2) The contract number including any alpha-numeric prefix identifying the Contracting Office;

(3) The name and address of the Contracting Office;

(4) The total number of bills submitted with the statement; and

(5) A listing of the respective amounts paid or, in lieu of such listing, an adding machine tape of the amounts paid showing the Contractor's voucher or check numbers.

CLAUSE I.55 - FAR 52.249-14 EXCUSABLE DELAYS (APR 1984)

(a) Except for defaults of subcontractors at any tier, the Contractor shall not be in default because of any failure to perform this contract under its terms if the failure arises from causes beyond the control and without the fault or negligence of the Contractor. Examples of these causes are (1) acts of God or of the public enemy, (2) acts of the Government in either its sovereign or contractual capacity, (3) fires, (4) floods, (5) epidemics, (6) quarantine restrictions, (7) strikes, (8) freight embargoes, and (9)

ususually severe weather. In each instance, the failure to perform must be beyond the control and without the fault or negligence of the Contractor. “Default” includes failure to make progress in the work so as to endanger performance.

(b) If the failure to perform is caused by the failure of a subcontractor at any tier to perform or make progress, and if the cause of the failure was beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either, the Contractor shall not be deemed to be in default, unless --

(1) The subcontracted supplies or services were obtainable from other sources;

(2) The Contracting Officer ordered the Contractor in writing to purchase these supplies or services from the other source; and

(3) The Contractor failed to comply reasonably with this order.

(c) Upon requrest of the Contractor, the Contracting Officer shall ascertain the facts and extent of the failure. If the Contracting Officer determines that any failure to perform results from one or more of the causes above, the delivery schedule shall be revised, subject to the rights of the Government under the termination clause of this contract.

CLAUSE I.56 - RESERVED

CLAUSE I.57 - FAR 52.251-1 GOVERNMENT SUPPLY SOURCES (APR 1984)

The Contracting Officer may issue the Contractor an authorization to use Government supply sources in the performance of this contract. Title to all property acquired by the Contractor under such an authorization shall vest in the Government unless otherwise specified in the contract. Such property shall not be considered to be "Government-furnished property", as distinguished from "Government property". The provisions of the clause entitled “Government Property,” except its paragraphs (a) and (b), shall apply to all property acquired under such authorization.

CLAUSE I.58 - FAR 52.251-2 INTERAGENCY FLEET MANAGEMENT SYSTEM VEHICLES AND RELATED SERVICES (JAN 1991)

The Contracting Officer may issue the Contractor an authorization to obtain interagency fleet management system (IFMS) vehicles and related services for use in the performance of this contract. The use, service, and maintenance of interagency fleet management system vehicles and the use of related services by the Contractor shall be in accordance with 41 CFR 101-39 and 41 CFR 101-38.301-1.

CLAUSE I.59 - FAR 52.252-6 AUTHORIZED DEVIATIONS IN CLAUSES (APR 1984)

(a) The use in this solicitation or contract of any Federal Acquisition Regulation (48 CFR Chapter 1) clause with an authorized deviation is indicated by the addition of "(DEVIATION)" after the date of the clause.

(b) The use in this solicitation or contract of any Department of Energy Acquisition Regulation (48 CFR Chapter 9) clause with an authorized deviation is indicated by the addition of "(DEVIATION)" after the name of the regulation.

CLAUSE I.60 - FAR 52.253-1 COMPUTER GENERATED FORMS (JAN 1991)

(a) Any data required to be submitted on a Standard or Optional Form prescribed by the Federal Acquisition Regulation (FAR) may be submitted on a computer generated version of the form, provided there is no change to the name, content, or sequence of the data elements on the form, and provided the form carries the Standard or Optional Form number and edition date.

(b) Unless prohibited by agency regulations, any data required to be submitted on an agency unique form prescribed by an agency supplement to the FAR may be submitted on a computer generated version of the form provided there is no change to the name, content, or sequence of the data elements on the form and provided the form carries the agency form number and edition date.

(c) If the Contractor submits a computer generated version of a form that is different than the required form, then the rights and obligations of the Parties will be determined based on the content of the required form.

CLAUSE I.61 - DEAR 952.204-2 SECURITY (SEP 1997)

(a) Responsibility. It is the Contractor's duty to safeguard all classified information, special nuclear material, and other DOE property. The Contractor shall, in accordance with DOE security regulations and requirements, be responsible for safeguarding all classified information and protecting against sabotage, espionage, loss or theft of the classified documents and material in the Contractor's possession in connection with the performance of work under this contract. Except as otherwise expressly provided in this contract, the Contractor shall, upon completion or termination of this contract, transmit to DOE any classified matter in the possession of the Contractor or any person under the Contractor's control in connection with performance of this contract. If retention by the Contractor of any classified matter is required after the completion or termination of the contract, the Contractor shall identify the items and types or categories of matter proposed for retention, the reasons for the retention of the matter, and the proposed period of retention. If the retention is approved by the Contracting Officer, the security

provisions of the contract shall continue to be applicable to the matter retained. Special nuclear material shall not be retained after the completion or termination of the contract.

(b) Regulations. The Contractor agrees to comply with all security regulations and requirements of DOE in effect on the date of award.

(c) Definition of Classified Information. The term "classified information" means Restricted Data, Formerly Restricted Data, or National Security Information.

(d) Definition of Restricted Data. The term "Restricted Data" means all data concerning (1) design, manufacture, or utilization of atomic weapons; (2) the production of special nuclear material; or (3) the use of special nuclear material in the production of energy, but shall not include data declassified or removed from the Restricted Data category pursuant to Section 142 of the Atomic Energy Act of 1954, as amended.

(e) Definition of Formerly Restricted Data. The term "Formerly Restricted Data" means all data removed from the Restricted Data category under Section 142d. of the Atomic Energy Act of 1954, as amended.

(f) Definition of National Security Information. The term "National Security Information" means any information or material, regardless of its physical form or characteristics, that is owned by, produced for or by, or is under the control of the United States Government, that has been determined pursuant to Executive Order 12356 or prior Orders to require protection against unauthorized disclosure, and which is so designated.

(g) Definition of Special Nuclear Material (SNM). SNM means (1) plutonium, uranium enriched in the isotope 233 or in the isotope 235, and any other material which pursuant to the provisions of Section 51 of the Atomic Energy Act of 1954, as amended, has been determined to be special nuclear material, but does not include source material; or (2) any material artificially enriched by any of the foregoing, but does not include source material.

(h) Security Clearance of Personnel. The Contractor shall not permit any individual to have access to any classified information, except in accordance with the Atomic Energy Act of 1954, as amended, Executive Order 12356, and the DOE's regulations or requirements applicable to the particular level and category of classified information to which access is required.

(i) Criminal Liability. It is understood that disclosure of any classified information relating to the work or services ordered hereunder to any person not entitled to receive it, or failure to safeguard any classified information that may come to the Contractor or any person under the Contractor's control in connection with work under this contract, may subject the Contractor, its agents, employees, or subcontractors to criminal liability under the laws of the United States. (See the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2011 et seq.; 18 U.S.C. 793 and 794; and Executive Order 12356.)

(j) Subcontracts and Purchase Orders. Except as otherwise authorized, in writing, by the Contracting Officer, the Contractor shall insert provisions similar to the foregoing in all subcontracts and purchase orders under this contract.

CLAUSE I.62 - DEAR 952.204-70 CLASSIFICATION/DECLASSIFICATION (SEP 1997)

In the performance of work under this contract, the Contractor or subcontractor shall comply with all provisions of the Department of Energy's regulations and mandatory DOE directives which apply to work involving the classification and declassification of information, documents, or material. In this section, "information" means facts, data, or knowledge itself; "document" means the physical medium on or in which information is recorded; and "material" means a product or substance which contains or reveals information, regardless of its physical form or characteristics. Classified information is "Restricted Data" and "Formerly Restricted Data" (classified under the Atomic Energy Act of 1954, as amended) and "National Security Information" (classified under Executive Order 12958 or prior Executive Orders). The original decision to classify or declassify information is considered an inherently Governmental function. For this reason, only Government personnel may serve as original classifiers, i.e., Federal Government Original Classifiers. Other personnel (Government or Contractor) may serve as derivative classifiers which involves making classification decisions based upon classification guidance which reflect decisions made by Federal Government Original Classifiers.

The Contractor or subcontractor shall ensure that any document or material that may contain classified information is reviewed by either a Federal Government or a Contractor Derivative Classifier in accordance with classification regulations including mandatory DOE directives and classification/declassification guidance furnished to the Contractor by the Department of Energy to determine whether it contains classified information prior to dissemination. For information which is not addressed in classification/declassification guidance, but whose sensitivity appears to warrant classification, the Contractor or subcontractor shall ensure that such information is reviewed by a Federal Government Original Classifier.

In addition, the Contractor or subcontractor shall ensure that existing classified documents (containing either Restricted Data or Formerly Restricted Data or National Security Information) which are in its possession or under its control are periodically reviewed by a Federal Government or Contractor Derivative Declassifier in accordance with classification regulations, mandatory DOE directives and classification/declassification guidance furnished to the Contractor by the Department of Energy to determine if the documents are no longer appropriately classified. Priorities for declassification review of classified documents shall be based on the degree of public and researcher interest and the likelihood of declassification upon review. Documents which no longer contain classified information are to be declassified. Declassified documents then shall be reviewed to determine if they are publicly releasable. Documents which are declassified and determined to be publicly releasable are to be made available to the public in order to maximize the public's access to as much Government information as possible while minimizing security costs.

The Contractor or subcontractor shall insert this clause in any subcontract which involves or may involve access to classified information.

CLAUSE I.63 - DEAR 952.204-74 FOREIGN OWNERSHIP, CONTROL, OR INFLUENCE OVER CONTRACTOR (DEVIATION) (APR 1999)

(a) For purposes of this clause, subcontractor means any subcontractor at any tier and the term "Contracting Officer" shall mean DOE Contracting Officer. When this clause is included in a subcontract, the term "Contractor" shall mean subcontractor and the term "contract" shall mean subcontract.

(b) The Contractor shall immediately provide the Contracting Officer written notice of any changes in the extent and nature of FOCI over the Contractor which would affect the information provided in the Certificate Pertaining to Foreign Interests and its supporting data. Further, notice of changes in ownership or control which are required to be reported to the Securities and Exchange Commission, the Federal Trade Commission, or the Department of Justice shall also be furnished concurrently to the Contracting Officer.

(c) In those cases where a Contractor has changes involving FOCI, the DOE must determine whether the changes will pose an undue risk to the common defense and security. In making this determination, the Department shall consider proposals made by the Contractor to avoid or mitigate foreign influences.

(d) If the Contracting Officer at any time determines that the Contractor is, or is potentially, subject to FOCI, the Contractor shall comply with such instructions as the Contracting Officer shall provide in writing to safeguard any classified information or special nuclear material.

(e) The Contractor agrees to insert terms that conform substantially to the language of this clause including this paragraph (e) in all subcontracts under this contract that will require access authorizations for access to classified information or special nuclear material. Additionally, the Contractor shall require such subcontractors to submit a completed SF328, to the DOE Office of Safeguards and Security (marked to identify the applicable prime contract). Such subcontracts or purchase orders shall not be awarded until the Contractor is notified that the proposed subcontractors have been cleared. Information to be provided by a subcontractor pursuant to this clause may be submitted directly to the Contracting Officer.

(f) Information submitted by the Contractor or any affected subcontractor as required pursuant to this clause shall be treated by DOE to the extent permitted by law, as business or financial information submitted in confidence to be used solely for purposes of evaluating FOCI.

(g) The requirements of this clause are in addition to the requirement that a Contractor obtain and retain the employee security clearances required by the contract. This clause shall not operate as a limitation on DOE's rights, including its rights to terminate this contract.

(h) The Contracting Officer may terminate this contract for default either if the Contractor fails to meet obligations imposed by this clause, e.g., provide the information required by this clause, comply with the Contracting Officer's instructions about safeguarding classified information, or make this clause applicable to subcontractors, or if, in the Contracting Officer's judgment, the Contractor creates an FOCI situation in order to avoid performance or a termination for default. The Contracting Officer may terminate this contract for convenience if the Contractor becomes subject to FOCI and for reasons other than avoidance of performance of the contract, cannot, or chooses not to, avoid or mitigate the FOCI problem.

CLAUSE I.64 - DEAR 952.208-7 TAGGING OF LEASED VEHICLES (APR 1984)

(a) DOE intends to use U.S. Government license tags.

(b) While it is the intention that vehicles leased hereunder shall operate on Federal tags, the DOE reserves the right to utilize State tags, if necessary, to accomplish its mission. Should State tags be required, the Contractor shall furnish the DOE the documentation required by the State to acquire such tags.

CLAUSE I.65 - DEAR 952.209-72 ORGANIZATIONAL CONFLICTS OF INTEREST (JUN 1997) ALTERNATE 1 (JUN 1997)

(a) Purpose. The purpose of this clause is to ensure that the Contractor (1) is not biased because of its financial, contractual, organizational, or other interests which relate to the work under this contract, and (2) does not obtain any unfair competitive advantage over other parties by virtue of its performance of this contract.

(b) Scope. The restrictions described herein shall apply to performance or participation by the Contractor and any of its affiliates or their successors in interest (hereinafter collectively referred to as "Contractor") in the activities covered by this clause as a prime contractor, subcontractor, cosponsor, joint venturer, consultant, or in any similar capacity. For the purpose of this clause, affiliation occurs when a business concern is controlled by or has the power to control another or when a third party has the power to control both.

(1) Use of Contractor's Work Product.

(i) The Contractor shall be ineligible to participate in any capacity in Department contracts, subcontracts, or proposals therefor (solicited and unsolicited) which stem directly from the Contractor's performance of

work under this contract for a period of five years after the completion of this contract. Furthermore, unless so directed in writing by the Contracting Officer, the Contractor shall not perform any advisory and assistance services work under this contract on any of its products or services or the products or services of another firm if the Contractor is or has been substantially involved in their development or marketing. Nothing in this subparagraph shall preclude the Contractor from competing for follow-on contracts for advisory and assistance services.

(ii) If, under this contract, the Contractor prepares a complete or essentially complete statement of work or specifications to be used in competitive acquisitions, the Contractor shall be ineligible to perform or participate in any capacity in any contractual effort which is based on such statement of work or specifications. The Contractor shall not incorporate its products or services in such statement of work or specifications unless so directed in writing by the Contracting Officer, in which case the restriction in this subparagraph shall not apply.

(iii) Nothing in this paragraph shall preclude the Contractor from offering or selling its standard and commercial items to the Government.

(2) Access to and use of information.

(i) If the Contractor, in the performance of this contract, obtains access to information, such as Department plans, policies, reports, studies, financial plans, internal data protected by the Privacy Act of 1974 (5 U.S.C. 552a), or data which has not been released or otherwise made available to the public, the Contractor agrees that without prior written approval of the Contracting Officer it shall not:

(A) use such information for any private purpose unless the information has been released or otherwise made available to the public;

(B) compete for work for the Department based on such information for a period of six (6) months after either the completion of this contract or until such information is released or otherwise made available to the public, whichever is first;

(C) submit an unsolicited proposal to the Government which is based on such information until one year after such information is released or otherwise made available to the public; and

(D) release such information unless such information has previously been released or otherwise made available to the public by the Department.

(ii) In addition, the Contractor agrees that to the extent it receives or is given access to proprietary data, data protected by the Privacy Act of 1974 (5 U.S.C. 552a), or other confidential or privileged technical, business, or financial information under this contract, it shall treat such information in accordance with any restrictions imposed on such information.

(iii) The Contractor may use technical data it first produces under this contract for its private purposes consistent with paragraphs (b)(2)(i)(A) and (D) of this clause and the patent, rights in data, and security provisions of this contract.

(c) Disclosure after award.

(1) The Contractor agrees that, if changes, including additions, to the facts disclosed by it prior to award of this contract, occur during the performance of this contract, it shall make an immediate and full disclosure of such changes in writing to the Contracting Officer. Such disclosure may include a description of any action which the Contractor has taken or proposes to take to avoid, neutralize, or mitigate any resulting conflict of interest. The Department may, however, terminate the contract for convenience if it deems such termination to be in the best interest of the Government.

(2) In the event that the Contractor was aware of facts required to be disclosed or the existence of an actual or potential organizational conflict of interest and did not disclose such facts or such conflict of interest to the Contracting Officer, DOE may terminate this contract for default.

(d) Remedies. For breach of any of the above restrictions or for nondisclosure or misrepresentation of any facts required to be disclosed concerning this contract, including the existence of an actual or potential organizational conflict of interest at the time of or after award, the Government may terminate the contract for default, disqualify the Contractor from subsequent related contractual efforts, and pursue such other remedies as may be permitted by law or this contract.

(e) Waiver. Requests for waiver under this clause shall be directed in writing to the Contracting Officer and shall include a full description of the requested waiver and the reasons in support thereof. If it is determined to be in the best interests of the Government, the Contracting Officer may grant such a waiver in writing.

(f) Subcontracts.

(1) The Contractor shall include a clause, substantially similar to this clause, including this paragraph (f), in subcontracts expected to exceed the simplified acquisition threshold determined in accordance with FAR Part 13 and involving the performance of advisory and assistance services as that term is defined at

FAR 37.201. The terms “contract,” “Contractor,” and “Contracting Officer” shall be appropriately modified to preserve the Government’s rights.

(2) Prior to the award under this contract of any subcontracts for advisory and assistance services, the Contractor shall obtain from the proposed subcontractor or consultant the disclosure required by DEAR 909.507-1, and shall determine in writing whether the interests disclosed present an actual or significant potential for an organizational conflict of interest. Where an actual or significant potential organizational conflict of interest is identified, the Contractor shall take actions to avoid, neutralize, or mitigate the organizational conflict to the satisfaction of the Contractor. If the conflict cannot be avoided or neutralized, the Contractor must obtain the approval of the DOE Contracting Officer prior to entering into the subcontract.

CLAUSE I.66 - DEAR 952.217-70 ACQUISITION OF REAL PROPERTY (APR 1984)

(a) Notwithstanding any other provision of the contract, the prior approval of the Contracting Officer shall be obtained when, in performance of this contract, the Contractor acquires or proposes to acquire use of real property by:

(1) Purchase, on the Government's behalf or in the Contractor's own name, with title eventually vesting in the Government.

(2) Lease, and the Government assumes liability for, or will otherwise pay for the obligation under the lease as a reimbursable contract cost.

(3) Acquisition of temporary interest through easement, license or permit, and the Government funds the entire cost of the temporary interest.

(b) Justification of an execution of any real property acquisitions shall be in accordance and compliance with directions provided by the Contracting Officer.

(c) The substance of this Article, including this paragraph (c), shall be included in any subcontract occasioned by this contract under which property described in paragraph (a) of this Article shall be acquired.

CLAUSE I.67 - DEAR 952.223-75 PRESERVATION OF INDIVIDUAL OCCUPATIONAL RADIATION EXPOSURE RECORDS (APR 1984)

Individual occupational radiation exposure records generated in the performance of work under this contract shall be subject to inspection by DOE and shall be preserved by the Contractor until disposal is authorized by DOE or at the option of the Contractor delivered to DOE upon completion or termination of the contract. If the Contractor exercises the foregoing option, title to such records shall vest in DOE upon delivery.

CLAUSE I.68 - DEAR 952.224-70 PAPERWORK REDUCTION ACT (APR 1994)

(a) In the event that it subsequently becomes a contractual requirement to collect or record information calling either for answer to identical questions from ten (10) or more persons other than Federal employees, or information from Federal employees which is to be used for statistical compilations of general public interest, the Federal Reports Act will apply to this contract. No plan, questionnaire, interview guide, or other similar device for collecting information (whether repetitive or single-time) may be used without first obtaining clearance from the Office of Management and Budget (OMB).

(b) The Contractor shall request the required OMB clearance from the Contracting Officer before expending any funds or making public contacts for the collection of data. The authority to expend funds and to proceed with the collection of data shall be, in writing, by the Contracting Officer. The Contractor must plan at least ninety (90) days for OMB clearance. Excessive delay caused by the Government which arises out of causes beyond the control and without the fault or negligence of the Contractor will be considered in accordance with the clause entitled "Excusable Delays", if such clause is applicable. If not, the period of performance may be extended pursuant to this Clause if approved by the Contracting Officer."

CLAUSE I.69 - DEAR 952.226-74 DISPLACED EMPLOYEE HIRING PREFERENCE (JUN 1997)

(a) Definition.

Eligible employee means a current or former employee of a Contractor or subcontractor employed at a Department of Energy Defense Nuclear Facility (1) whose position of employment has been, or will be, involuntarily terminated (except if terminated for cause), (2) who has also met the eligibility criteria contained in the Department of Energy guidance for Contractor work force restructuring, as may be amended or supplemented from time to time, and (3) who is qualified for a particular job vacancy with the Department or one of its Contractors with respect to work under its contract with the Department at the time the particular position is available.

(b) Consistent with Department of Energy guidance for Contractor work force restructuring, as may be amended or supplemented from time to time, the Contractor agrees that it will provide a preference in hiring to an eligible employee to the extent practicable for work performed under this contract.

(c) The requirements of this clause shall be included in subcontracts at any tier (except for subcontracts for commercial items pursuant to 41 U.S.C. 403) expected to exceed $500,000.

CLAUSE I.70 - DEAR 952.250-70 NUCLEAR HAZARDS INDEMNITY AGREEMENT (JUN 1996) (DEVIATION)

(a) Authority. This clause is incorporated into this contract pursuant to the authority contained in Subsection 170d. of the Atomic Energy Act of 1954, as amended, (hereinafter called the Act.)

(b) Definitions. The definitions set out in the Act shall apply to this Clause.

(c) Financial protection. Except as hereafter permitted or required, in writing, by DOE, the Contractor will not be required to provide or maintain, and will not provide or maintain at Government expense, any form of financial protection to cover public liability, as described in paragraph (d)(2) below. DOE may, however, at any time require, in writing, that the Contractor provide and maintain financial protection of such a type and in such amount as DOE shall determine to be appropriate to cover such public liability, provided that the costs of such financial protection are reimbursed to the Contractor by DOE.

(d) Indemnification.

(1) To the extent that the Contractor and other persons indemnified are not compensated by any financial protection permitted or required by DOE, DOE will indemnify the Contractor and other persons indemnified against (i) claims for public liability as described in subparagraph (d)(2) of this clause; and (ii) such legal costs of the Contractor and other persons indemnified as are approved by DOE, provided that DOE's liability, including such legal costs, shall not exceed the amount set forth in Section 170e.(1)(B) of the Act in the aggregate for each nuclear incident or precautionary evacuation occurring within the United States or $100 million in the aggregate for each nuclear incident occurring outside the United States, irrespective of the number of persons indemnified in connection with this contract.

(2) The public liability referred to in subparagraph (d)(1) of this clause is public liability as defined in the Act which (i) arises out of or in connection with the activities under this contract, including transportation; and (ii) arises out of or results from a nuclear incident or precautionary evacuation, as those terms are defined in the Act.

(e) Waiver of Defenses.

(1) In the event of a nuclear incident, as defined in the Act, arising out of nuclear waste activities, as defined in the Act, the Contractor, on behalf of itself and other persons indemnified, agrees to waive any issue or defense as to charitable or governmental immunity.

(2) In the event of an extraordinary nuclear occurrence which:

(i) Arises out of, results from, or occurs in the course of the construction, possession, or operation of a production or utilization facility; or

(ii) Arises out of, results from, or occurs in the course of transportation of source material, by-product material, or special nuclear material to or from a production or utilization facility; or

(iii) Arises out of or results from the possession, operation, or use by the Contractor or a subcontractor of a device utilizing special nuclear material or by-product material, during the course of the contract activity; or

(iv) Arises out of, results from, or occurs in the course of nuclear waste activities, the Contractor, on behalf of itself and other persons indemnified, agrees to waive:

(A) Any issue or defense as to the conduct of the claimant (including the conduct of persons through whom the claimant derives its cause of action) or fault of persons indemnified, including but not limited to:

1. Negligence;

2. Contributory negligence;

3. Assumption of risk; or

4. Unforeseeable intervening causes, whether involving the conduct of a third person or an act of God;

(B) Any issue or defense as to charitable or governmental immunity; and

(C) Any issue or defense based on any statute of limitations, if suit is instituted within three (3) years from the date on which the claimant first knew, or reasonably could have known, of his injury or change and the cause thereof. The waiver of any such issue or defense shall be effective regardless of whether such issue or defense may otherwise be deemed jurisdictional or relating to an element in the cause of action. The waiver shall be judicially enforceable in accordance with its terms by the claimant against the person indemnified.

(v) The term extraordinary nuclear occurrence means an event which DOE has determined to be an extraordinary nuclear occurrence as defined in the Act. A determination of whether or not there has been an

extraordinary nuclear occurrence will be made in accordance with the procedures in 10 CFR Part 840.

(vi) For the purposes of that determination, "offsite" as that term is used in 10 CFR Part 840 means away from "the contract location" which phrase means any DOE facility, installation, or site at which contractual activity under this contract is being carried on, and any Contractor-owned or controlled facility, installation, or site at which the Contractor is engaged in the performance of contractual activity under this contract.

(3) The waivers set forth above:

(i) Shall be effective regardless of whether such issue or defense may otherwise be deemed jurisdictional or relating to an element in the cause of action;

(ii) Shall be judicially enforceable in accordance with its terms by the claimant against the person indemnified;

(iii) Shall not preclude a defense based upon a failure to take reasonable steps to mitigate damages;

(iv) Shall not apply to injury or damage to a claimant or to a claimant's property which is intentionally sustained by the claimant or which results from a nuclear incident intentionally and wrongfully caused by the claimant;

(v) Shall not apply to injury to a claimant who is employed at the site of and in connection with the activity where the extraordinary nuclear occurrence takes place, if benefits therefor are either payable or required to be provided under any workmen's compensation or occupational disease law;

(vi) Shall not apply to any claim resulting from a nuclear incident occurring outside the United States;

(vii) Shall be effective only with respect to those obligations set forth in this clause and in insurance policies, contracts or other proof of financial protection; and

(viii) Shall not apply to, or prejudice the prosecution or defense of, any claim or portion of claim which is not within the protection afforded under (A) the limit of liability provisions under Subsection 170e. of the Act, and (B) the terms of this agreement and the terms of insurance policies, contracts, or other proof of financial protection.

(f) Notification and litigation of claim. The Contractor shall give immediate written notice to DOE of any known action or claim filed or made against the Contractor or other person indemnified for public liability as defined in paragraph (d)(2). Except as otherwise directed by DOE, the Contractor shall furnish promptly to DOE, copies of all pertinent papers received by the Contractor or filed with respect to such actions or claims. DOE shall have the right to, and may collaborate with, the Contractor and any other person indemnified in the settlement or defense of any action or claim and shall have the right to (1) require the prior approval of DOE for the payment of any claim that DOE may be required to indemnify hereunder; and (2) appear through the Attorney General on behalf of the Contractor or other person indemnified in any action brought upon any claim that DOE may be required to indemnify hereunder, take charge of such action, and settle or defend any such action. If the settlement or defense of any such action or claim is undertaken by DOE, the Contractor or other person indemnified shall furnish all reasonable assistance in effecting a settlement or asserting a defense.

(g) Continuity of DOE obligations. The obligations of DOE under this clause shall not be affected by any failure on the part of the Contractor to fulfill its obligation under this contract and shall be unaffected by the death, disability, or termination of existence of the Contractor, or by the completion, termination or expiration of this contract.

(h) Effect of other clauses. The provisions of this clause shall not be limited in any way by, and shall be interpreted without reference to, any other clause of this contract, including the clause entitled Contract Disputes, provided, however, that this clause shall be subject to the clauses entitled Covenant Against Contingent Fees, and Accounts, Records and Inspection, paragraph (i) Comptroller General, and any provisions that are later added to this contract as required by applicable Federal law (including statutes, executive orders and regulations) to be included in Nuclear Hazards Indemnity Agreements.

(i) Civil penalities. The contractor and its subcontractors and suppliers who are indemnified under the provisions of this clause are subject to civil penalties, pursuant to 234A of the Act, for violations of applicable DOE nuclear-safety related rules, regulations, or orders.

(j) Criminal penalties. Any individual director, officer, or employee of the Contractor or of its subcontractors and suppliers who are indemnified under the provisions of this clause are subject to criminal penalties, pursuant to Section 223(c) of the Act for knowing and willful violation of the Atomic Energy Act of 1954, as amended, and applicable DOE nuclear safety-related rules, regulations or orders which violation results in, or, if undetected, would have resulted in a nuclear incident.

(k) Inclusion in subcontracts. The Contractor shall insert this clause in any subcontract which may involve the risk of public liability, as that term is defined in the Act and further described in paragraph (d)(2) above. However, this clause shall not be included in subcontracts in which the subcontractor is subject to Nuclear Regulatory Commission (NRC) financial protection requirements under Section 170b. of the Act or NRC

agreements of indemnification under Section 170c. or k. of the Act for the activities under the subcontract.

(l) This indemnity agreement shall be applicable with respect to nuclear incidents occurring on or after August 20, 1988.

(m) To the extent that the contractor is compensated by any financial protection, or is indemnified pursuant to this clause, or is effectively relieved of public liability by an order or orders limiting same, pursuant to 170e of the Act, the provisions of the clause providing general authority indemnity shall not apply.

CLAUSE I.71 - DEAR 952.251-70 CONTRACTOR EMPLOYEE TRAVEL DISCOUNTS (JUN 1995)

Consistent with contract-authorized travel requirements, Contractor employees shall make use of the travel discounts offered to Federal travelers, through use of contracted airlines discount air fares, hotels and motels lodging rates and car rental companies, when use of such discounts

would result in lower overall trip costs and the discounted services are reasonably available to Contractor employees performing official Government contract business. Vendors providing these services may require that the Contractor employee traveling on Government business be furnished with a letter of identification signed by the authorized Contracting Officer.

(a) Contracted airlines. Airlines participating in travel discounts are listed in the Federal Travel Directory (FTD), published monthly by the General Services Administration (GSA). Regulations governing the use of contracted airlines are contained in the Federal Travel Regulation (FTR), 41 CFR Part 301-15, Travel Management Programs. It stipulates that cost-reimbursable Contractor employees may obtain discount air fares by use of a Government Transportation Request (GTR), Standard Form 1169, cash or personal credit cards. When the GTR is used, Contracting Officers may issue a blanket GTR for a period of not less than two weeks nor more than one month. In unusual circumstances, such as prolonged or international travel, the Contracting Officer may extend the period for which a blanket GTR is effective to a maximum of three months. Contractors will ensure that their employees traveling under GTR provide the GTR number to the contracted airlines for entry on individual tickets and on month-end billings to the Contractor.

(b) Hotels/motels. Participating hotels and motels which extend discounts are listed in the FTD, which shows rates, facilities, and identifies by code those which offer reduced rates to cost-reimbursable Contractor employees while traveling on official contract business.

(c) Car rentals. The Military Traffic Management Command (MTMC) Department of Defense, negotiates rate agreements with car rental companies for special flat rates and

unlimited mileage. Participating car rental companies which offer these terms to cost-reimbursable Contractor employees while traveling on official contract business are listed in the FTD.

(d) Procedures for obtaining service.

(1) Identification and method of payment requirements for participating Federal contracted airlines are listed in the FTR. Travel discount air fares may be ordered by the issuance of a GTR either directly to the Contractor, or to a Scheduled Airline Travel Office (SATO) or Federal Travel Management Center (FTMC), provided the letter of identification signed by the cognizant Contracting Officer accompanies the order. In appropriate instances, such as geographical proximity, Contractors may obtain discount air fares through a DOE office or a cooperating local travel agency when neither a SATO or FTMC is available. Some airlines allow the purchase of discounted air fares with cash or credit card.

(2) In the case of hotel and motel accommodations, reservations may be made by the Contractor employee directly with the hotel or motel but the employee must display, on arrival, the letter of identification and any other identification required by the hotel or motel proprietorship.

(3) For car rentals, generally the same procedures as in (d)(2) above will be followed in arranging reservations and obtaining discounts.

(e) Standard letter of identification. Contractors shall prepare for the authorizing Contracting Officer a letter of identification based on the following format:

FORMAT FOR GOVERNMENT CONTRACTORS TO QUALIFY FOR TRAVEL DISCOUNTS (TO BE TYPED ON AGENCY OFFICIAL LETTERHEAD)

To: (Source of ticketing, accommodations or rental)

Subject: Official Travel of Government Contractor

(Full name of traveler), bearer of this letter, is an employee of (company name) which is under contract to this agency under the Government contract (contract number). During the period of the contract (give dates), the employee is eligible and authorized to use available discount rates for contract-related travel in accordance with your contract and/or agreement with the Federal Government.

(Signature, title and telephone number of the Contracting Officer)

CLAUSE I.72 - DEAR 970.5203-3 BUY AMERICAN ACT - SUPPLIES (JAN 1994)

(a) The Buy American Act (41 U.S.C. 10) provides that the Government give preference to domestic end products.

"Components," as used in this clause, means those articles, materials, and supplies incorporated directly into the end products.

"Domestic end product," as used in this clause, means -

(1) an unmanufactured end product mined or produced in the United States, or

(2) an end product manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind as the products referred to in subparagraphs (b)(2) or (3) of this clause shall be treated as domestic. Scrap generated, collected, and prepared for processing in the United States is considered domestic.

"End products," as used in this clause, means those articles, materials, and supplies to be acquired for public use under this contract.

(b) The Contractor shall use only domestic end products, except those -

(1) for use outside the United States;

(2) that the Government determines are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality:

(3) for which the agency determines that domestic preference would be inconsistent with the public interest; or

(4) for which the agency determines the cost to be unreasonable (See FAR 25.105).

CLAUSE I.73 - DEAR 970.5204-1(b) COUNTERINTELLIGENCE (SEP 1997)

(a) The Contractor shall take all reasonable precautions in the work under this contract to protect DOE programs, facilities, technology, personnel, unclassified sensitive information and classified matter from foreign intelligence threats and activities conducted for governmental or industrial purposes, in accordance with DOE Order 5670.3, Counterintelligence Program; Executive Order 12333, U.S. Intelligence Activities; and other pertinent national and Departmental Counterintelligence requirements.

(b) The Contractor shall appoint a qualified employee(s) to function as the Contractor Counterintelligence Officer. The Contractor Counterintelligence Officer will be

responsible for conducting defensive Counterintelligence briefings and debriefings of employees traveling to foreign countries or interacting with foreign nationals; providing thoroughly documented written reports relative to targeting, suspicious activity and other matters of Counterintelligence interest; immediately reporting targeting, suspicious activity and other Counterintelligence concerns to the DOE Headquarters Counterintelligence Division; and providing assistance to other elements of the U.S. Intelligence Community as stated in the aforementioned Executive Order, the DOE Counterintelligence Order, and other pertinent national and Departmental Counterintelligence requirements.

CLAUSE I.74 - DEAR 970.5204-2 INTEGRATION OF ENVIRONMENT, SAFETY, AND HEALTH INTO WORK PLANNING AND EXECUTION (JUN 1997)

(a) For the purposes of this clause,

(1) Safety encompasses environment, safety and health, including pollution prevention and waste minimization; and

(2) Employees include subcontractor employees.

(b) In performing work under this contract, the Contractor shall perform work safely, in a manner that ensures adequate protection for employees, the public, and the environment, and shall be accountable for the safe performance of work. The Contractor shall exercise a degree of care commensurate with the work and the associated hazards. The Contractor shall ensure that management of environment, safety and health (ES&H) functions and activities becomes an integral but visible part of the Contractor's work planning and execution processes. The Contractor shall, in the performance of work, ensure that:

(1) Line management is responsible for the protection of employees, the public, and the environment. Line management includes those Contractor and subcontractor employees managing or supervising employees performing work.

(2) Clear and unambiguous lines of authority and responsibility for ensuring ES&H are established and maintained at all organizational levels.

(3) Personnel possess the experience, knowledge, skills, and abilities that are necessary to discharge their responsibilities.

(4) Resources are effectively allocated to address ES&H, programmatic, and operational considerations. Protecting employees, the public, and the environment is a priority whenever activities are planned and performed.

(5) Before work is performed, the associated hazards are evaluated and an agreed-upon set of ES&H standards and requirements are established which, if properly

implemented, provide adequate assurance that employees, the public, and the environment are protected from adverse consequences.

(6) Administrative and engineering controls to prevent and mitigate hazards are tailored to the work being performed and associated hazards. Emphasis should be on designing the work and/or controls to reduce or eliminate the hazards and to prevent accidents and unplanned releases and exposures.

(7) The conditions and requirements to be satisfied for operations to be initiated and conducted are established and agreed-upon by DOE and the Contractor. These agreed-upon conditions and requirements are requirements of the contract and binding upon the Contractor. The extent of documentation and level of authority for agreement shall be tailored to the complexity and hazards associated with the work and shall be established in a Safety Management System.

(c) The Contractor shall manage and perform work in accordance with a documented Safety Management System (System) that fulfills all conditions in paragraph (b) of this clause at a minimum. Documentation of the System shall describe how the Contractor will:

(1) Define the scope of work;

(2) Identify and analyze hazards associated with the work;

(3) Develop and implement hazard controls;

(4) Perform work within controls; and

(5) Provide feedback on adequacy of controls and continue to improve safety management.

(d) The System shall describe how the Contractor will establish, document, and implement safety performance objectives, performance measures, and commitments in response to DOE program and budget execution guidance while maintaining the integrity of the System. The System shall also describe how the Contractor will measure system effectiveness.

(e) The Contractor shall submit to the Contracting Officer documentation of its System for review and approval. Dates for submittal, discussions, and revisions to the System will be established by the Contracting Officer. Guidance on the preparation, content, review, and approval of the System will be provided by the Contracting Officer. On an annual basis, the Contractor shall review and update, for DOE approval, its safety performance objectives, performance measures, and commitments consistent with and in response to DOE's program and budget execution guidance and direction. Resources shall be identified and allocated to meet the safety objectives and performance commitments as well as maintain the integrity of the entire System.

Accordingly, the System shall be integrated with the Contractor's business processes for work planning, budgeting, authorization, execution, and change control.

(f) The Contractor shall comply with, and assist the Department of Energy in complying with, ES&H requirements of all applicable laws and regulations, and applicable directives identified in the clause of this contract on Laws, Regulations, and DOE Directives. The Contractor shall cooperate with Federal and non-Federal agencies having jurisdiction over ES&H matters under this contract.

(g) The Contractor shall promptly evaluate and resolve any noncompliance with applicable ES&H requirements and the System. If the Contractor fails to provide resolution or if, at any time, the Contractor's acts or failure to act causes substantial harm or an imminent danger to the environment or health and safety of employees or the public, the Contracting Officer may issue an order stopping work in whole or in part. Any stop work order issued by a Contracting Officer under this clause (or issued by the Contractor to a subcontractor in accordance with paragraph (i) of this clause) shall be without prejudice to any other legal or contractual rights of the Government. In the event that the Contracting Officer issues a stop work order, an order authorizing the resumption of the work may be issued at the discretion of the Contracting Officer. The Contractor shall not be entitled to an extension of time or additional fee or damages by reason of, or in connection with, any work stoppage ordered in accordance with this clause.

(h) The Contractor is responsible for compliance with the ES&H requirements applicable to this contract regardless of the performer of the work.

(i) The Contractor shall include a clause substantially the same as this clause in subcontracts involving complex or hazardous work on site at a DOE-owned or -leased facility. Such subcontracts shall provide for the right to stop work under the conditions described in paragraph (g) of this clause. Depending on the complexity and hazards associated with the work, the Contractor may require that the subcontractor submit a Safety Management System for the Contractor's review and approval.

CLAUSE I.75 - DEAR 970.5204-9 ACCOUNTS, RECORDS, AND INSPECTION (JUN 1996) (Modification)

(a) Accounts. The Contractor shall maintain a separate and distinct set of accounts, records, documents, and other evidence showing and supporting: all allowable costs incurred; collections accruing to the Contractor in connection with the work under this contract; other applicable credits, and fixed fee accruals under this contract; and the receipt, use, and disposition of all Government property coming into the possession of the Contractor under this contract. The system of accounts employed by the Contractor shall be satisfactory to DOE and in accordance with generally accepted accounting principles consistently applied.

(b) Inspection and audit of accounts and records. All books of account and records relating to this contract shall be subject to inspection and audit by DOE or its designees in accordance with the provisions of Clause I.111, Access To And Ownership Of Records, at all reasonable times, before and during the period of retention provided for in (d) below, and the Contractor shall afford DOE proper facilities for such inspection and audit.

(c) Audit of subcontractors' records. The Contractor also agrees, with respect to any subcontracts, (including fixed-price or unit-price subcontracts or purchase orders) where, under the terms of the subcontract, costs incurred are a factor in determining the amount payable to the subcontractor of any tier, to either conduct an audit of the subcontractor's costs or arrange for such an audit to be performed by the cognizant government audit agency through the Contracting Officer.

(d) Disposition of records. Except as agreed upon by the Government and the Contractor, all financial and cost reports, books of account and supporting documents, system files, data bases, and other data evidencing costs allowable, collections accruing to the Contractor in connection with the work under this contract, other applicable credits, and fee accruals under this contract, shall be the property of the Government, and shall be delivered to the Government or otherwise disposed of by the Contractor either as the Contracting Officer may from time to time direct during the progress of the work or, in any event, as the Contracting Officer shall direct upon completion or termination of this contract and final audit of accounts hereunder. Except as otherwise provided in this contract, all other records in the possession of the Contractor relating to this contract shall be preserved by the Contractor for a period of three years after final payment under this contract or otherwise disposed of in such manner as may be agreed upon by the Government and the Contractor.

(e) Reports. The Contractor shall furnish such progress reports and schedules, financial and cost reports, and other reports concerning the work under this contract as the Contracting Officer may from time to time require.

(f) Inspections. The DOE shall have the right to inspect the work and activities of the Contractor under this contract at such time and in such manner as it shall deem appropriate.

(g) Subcontracts. The Contractor further agrees to require the inclusion of provisions similar to those in paragraphs (a) through (g) and paragraph (i) of this clause in all subcontracts (including fixed-price or unit-price subcontracts or purchase orders) of any tier entered into hereunder where, under the terms of the subcontract, costs incurred are a factor in determining the amount payable to the subcontractor.

(h) Internal audit. The Contractor agrees to conduct an internal audit and examination satisfactory to DOE, of the records, operations, expenses, and the transactions with respect to costs claimed to be allowable under this contract annually and at such other

times as may be mutually agreed upon. The results of such audit, including the working papers, shall be submitted or made available to the Contracting Officer.

(i) Comptroller General

(1) The Comptroller General of the United States, or an authorized representative, shall have access to and the right to examine any of the Contractor's directly pertinent records involving transactions related to this contract or a subcontract hereunder.

(2) This paragraph may not be construed to require the Contractor or subcontractor to create or maintain any record that the Contractor or subcontractor does not maintain in the ordinary course of business or pursuant to a provision of law.

(3) Nothing in this contract shall be deemed to preclude an audit by the General Accounting Office of any transaction under this contract.

CLAUSE I.76 - DEAR 970.5204-11 CHANGES (APR 1984)

(a) *Changes and Adjustment of Fee*. The Contracting Officer may at any time and without notice to the sureties, if any, issue written directions within the general scope of this contract requiring additional work or directing the omission of, or variation in, work covered by this contract. If any such direction results in a material change in the amount or character of the work described in the "Statement of Work", an equitable adjustment of the fee, if any, shall be made in accordance with the agreement of the parties and the contract shall be modified in writing accordingly. Any claim by the Contractor for an adjustment under this clause must be asserted in writing within 30 days from the date of receipt by the Contractor of the notification of change; provided, however, that the Contracting Officer, if he decides that the facts justify such action, may receive and act upon any such claim asserted at any time prior to final payment under this contract. A failure to agree on an equitable adjustment under this clause shall be deemed to be a dispute within the meaning of the clause entitled "Disputes".

(b) Work to Continue. Nothing contained in this clause shall excuse the Contractor from proceeding with the prosecution of the work in accordance with the requirements of any direction hereunder.

CLAUSE I.77 - DEAR 970.5204-12 CONTRACTOR'S ORGANIZATION (JUL 1994)

(a) Organization chart. As promptly as possible after the execution of this contract, the Contractor shall furnish to the Contracting Officer a chart showing the names, duties,

and organization of key personnel, to be employed in connection with the work, and shall furnish from time to time supplementary information reflecting changes therein.

(b) Supervisory representative of Contractor. Unless otherwise directed by the Contracting Officer, a competent full-time resident supervisory representative of the Contractor satisfactory to the Contracting Officer shall be in charge of the work at the site at all times. This also applies to off-site work.

(c) The Contractor shall be responsible for maintaining satisfactory standards of employee competency, conduct, and integrity and shall be responsible for taking such disciplinary action with respect to its employees as may be necessary. The Contractor shall establish such standards and procedures as are necessary to implement effectively the provisions set forth in DEAR 970.2272, and such standards and procedures shall be subject to the approval of the Contracting Officer.

CLAUSE I.78 - DEAR 970.5204-13 ALLOWABLE COSTS AND FIXED FEE (MANAGEMENT AND OPERATING CONTRACTS) (MAR 1998) (DEVIATION)

(a) Compensation for Contractor's Services. Payment for the allowable costs as hereinafter defined, and of the fixed fee(s), if any, as hereinafter provided, shall constitute full and complete compensation for the performance of the work under this contract.

(b) Fixed-Fee. The fixed-fee payable to the Contractor for the performance of the work under this contract commencing November 1, 1999, is as follows:

(1) From November 1, 1999 through September 30, 2000 – $341,917
(2) From October 1, 2000 through September 30, 2001 - TBD
(3) From October 1, 2001 through September 30, 2002 - TBD
(4) From October 1, 2002 through September 30, 2003 - TBD
(5) From October 1, 2003 through September 30, 2004 - TBD

There shall be no adjustment in the amount of the Contractor's fixed-fee by reason of differences between any estimate of cost for performance of the work under this contract and the actual costs for performance of that work.

Furthermore, the parties agree that: 1) The “reserve fund” created under modification M100 will be carried forward to this contract extension as part of the Contractor’s fee; 2) The $350,000 of fiscal year 1996 management fee, $100,000 of the fiscal year 1997 management fee, $0 of the fiscal year 1998 management fee, and $0 of the fiscal year 1999 management are the “risk funds” provided to the Contractor to cover the additional financial risks that the Contractor has assumed pursuant to:

- Clause I.91 (h)(3)

- Clause I.91 (j)(2), except for punitive damages resulting from the willful misconduct, or lack of good faith of the Contractor's managerial personnel as defined in Clause H.1 (d)
- Clause H.12; and,
- Clause I.84 (f)(1)(i)(C)

Note that the total funds provided to create the "reserve fund" fiscal years 1996 and 1997 equate to $450,000 and will be carried forward to this contract extension as part of the contractor's fixed-fee; 3) Any positive difference between the "reserve funds" provided in fiscal years 1996 and 1997 and the actual expenditures to cover the financial risk described above (or agreed upon encumbrances due to pending claims) in fiscal years 2000 would be carried over and treated as a credit toward establishing the appropriate "reserve fund" in future fiscal years; and, 4) During the last year of the contract, the amount held in the "reserve fund" will be treated as a credit toward the last year's SURA Corporate Office Expenses (defined in Clause H.29) and the fixed-fee (defined in Clause I.78 in the first paragraph) paid to the Contractor. It is the intent of both parties that the Contractor will not keep any of the unused "reserve funds" upon expiration of this contract or any subsequent extension, thereto.

(c) Allowable Costs. The allowable cost of performing the work under this contract shall be the costs and expenses that are actually incurred by the Contractor in the performance of the contract work in accordance with its terms, that are necessary or incident thereto, and that are determined to be allowable as set forth in this paragraph. The determination of allowability of cost shall be based on:

(1) Allowability and reasonableness in accordance with FAR 31.201-2(d) and 31.201-3;

(2) Standards promulgated by the Cost Accounting Standards Board, if applicable; otherwise, generally accepted accounting principles and practices appropriate to the particular circumstances; and

(3) Recognition of all exclusions and limitations set forth in this clause or elsewhere in this contract as to types or amounts of items of cost.

Allowable costs shall not include the cost of any item described as unallowable in paragraph (e) of this clause except as indicated therein. Failure to mention an item of cost specifically in paragraphs (d) or (e) of this clause shall not imply either that it is allowable or that it is unallowable.

(d) Items of Allowable Cost. Subject to the other provisions of this clause, the following items of cost of work done under this contract shall be allowable to the extent indicated:

(1) Bonds and insurance, including self-insurance, as provided in the clause entitled, Insurance - Litigation and Claims.

(2) Communication costs, including telephone services, local and long-distance calls, telegrams, cablegrams, postage, and similar items.

(3) Consulting services (including legal and accounting), and related expenses, as approved by the Contracting Officer, except as made unallowable by paragraphs (e)(16) and (e)(26).

(4) Reasonable litigation and other legal expenses, including counsel fees, if incurred in accordance with the clause of the contract entitled, Insurance -- Litigation and Claims, and the DOE approved contractor litigation management procedures (including cost guidelines) as such procedures may be revised from time to time, and if not otherwise made unallowable in this contract.

(5) Losses and expenses (including settlements made with the consent of the Contracting Officer) sustained by the Contractor in the performance of this contract and certified in writing by the Contracting Officer to be reasonable, except the losses and expenses expressly made unallowable under other provisions of this contract.

(6) Materials, supplies, and equipment, including freight transportation, material handling, inspection, storage, salvage, and other usual expenses incident to the procurement, use and disposition thereof, subject to approvals required under other provisions of this contract.

(7) Patents, purchased design, license fees, and royalty payments to the extent expressly provided for under other provisions in this contract or as approved by the Contracting Officer, and preparation of invention disclosures, reports and related documents, and searching the art to the extent necessary to make such invention disclosures in accordance with any Patent Rights clause of this contract.

(8) Personnel costs and related expenses incurred in accordance with the personnel appendix which is hereby incorporated by reference and made a part of this contract. It is specifically understood and agreed that said personnel appendix sets forth in detail personnel costs and related expenses to be allowable under this contract and is intended to document those personnel policies, practices and plans which have been found acceptable by the Contracting Officer. It is further understood and agreed that the Contractor will advise DOE of any proposed changes in any matters covered by said policies, practices or plans which relate to this item of cost, and that the personnel appendix may be modified from time to time in writing by mutual agreement of the Contractor and DOE without execution of an amendment to this contract for the purpose of effectuating any such changes in, or additions to, said personnel appendix as may be agreed upon by the parties. Such modifications shall be evidenced by execution of written numbered approval letters from the Contracting Officer or his

representative. Types of personnel costs and related expenses to be incorporated into the personnel appendix, or amendments thereto, are as follows:

(i) Salaries and wages; bonuses and incentive compensation; overtime, shift differential, holiday, and other premium pay for time worked; nonwork time, including vacations, holidays, sick, funeral, military, jury, witness, and voting leave; salaries and wages to employees in their capacity as union stewards and committeemen for time spent in handling grievances, or serving on labor management (Contractor) committees; provided, however, that Contracting Officer approval of the total compensation (i.e., salaries and bonuses) payable for each identified position in Section III, paragaraph 1, of Part III, Section J, Appendix A is required. Total compensation, as used here, includes only the employee's base salary, bonus, and incentive compensation payments;

(ii) Legally required contributions to old-age and survivors' insurance, unemployment compensation plans, and workers compensation plans, (whether or not covered by insurance); voluntary or agreed-upon plans providing benefits for retirement, separation, life insurance, hospitalization, medical-surgical and unemployment (whether or not such plans are covered by insurance);

(iii) Travel (except foreign travel, which unless delegated requires specific approval by the Contracting Officer on a case-by-case basis); incidental subsistence and other allowances of Contractor employees, in connection with performance of work under this contract (including new employees reporting for work and transfer of employees, the transfer of their household goods and effects and the travel and subsistence of their dependents);

(iv) Employee relations, welfare, morale, etc.; programs including incentive or suggestion awards; employee counseling services, health or first-aid clinics; house or employee publications; and wellness/fitness centers;

(v) Personnel training, (except special education and training courses and research assignments calling for attendance at educational institutions which require specific approval by the Contracting Officer on a case-by-case basis); including apprenticeship training programs designed to improve efficiency and productivity of contract operations, to develop needed skills, and to develop scientific and technical personnel in specialized fields required in the contract work;

(vi) Recruitment of personnel (including help-wanted advertisement), including service of employment agencies at rates not in excess of standard commercial rates, employment office, travel of prospective

employees at the request of the Contractor for employment interviews; and

(vii) Net cost of operating plant-site cafeteria, dining rooms, and canteens attributable to the performance of the contract.

(viii) Compensation of a senior executive, provided that such compensation does not exceed the benchmark compensation amount determined applicable for the Contractor fiscal year by the Administrator, Office of Federal Procurement Policy. Costs of executive compensation shall be determined pursuant to Federal Acquisition Regulation 31.205-6(p).

(9) Repairs, maintenance, inspection, replacement, and disposal of Government-owned property and the restoration or clean-up of site and facilities to the extent approved by the Contracting Officer and as allowable under paragraph (f) of the clause of this contract entitled, Property.

(10) Subcontracts and purchase orders, including procurements from Contractor-controlled sources, subject to approvals required by other provisions of this contract.

(11) Subscriptions to trade, business, technical and professional periodicals.

(12) Taxes, fees, and charges levied by public agencies which the Contractor is required by law to pay, except those which are expressly made unallowable under other provisions of this contract.

(13) Utility services, including electricity, gas, water and sewerage.

(14) Indemnification of the Pension Benefit Guaranty Corporation, pursuant to the Employee Retirement Income Security Act of 1974, in accordance with FAR 31.205-6(j)(3)(iv).

(15) Establishment and maintenance of financial institution accounts in connection with the work hereunder, including, but not limited to, service charges, the cost of disbursing cash, necessary guards, cashiers, and paymasters. If payments to employees are made by check, facilities and arrangements for cashing checks may be provided without expense to the employees, subject to the approval of the Contracting Officer.

(e) Items of Unallowable Costs. The following items of costs are unallowable under this contract to the extent indicated:

(1) Advertising and public relations costs designed to promote the Contractor or its products, including the costs of promotional items and memorabilia such as

models, gifts and souvenirs, and the cost of memberships in civic and community organizations; except those advertising and public relations costs:

(i) Specifically required by the contract,

(ii) Approved, in advance, by the Contracting Officer as clearly in furtherance of work performed under the contract,

(iii) That arise from requirements of the contract and that are exclusively for recruiting personnel, acquiring scarce items for contract performance, disposing of scrap or surplus materials, the transfer of federally-owned or originated technology to State and local governments and to the private sector, or acquisition of contract-required supplies and services, or

(iv) Where the primary purpose of the activity is to facilitate contract performance in support of the DOE mission.

(2) Bad debts (including expenses of collection) and provisions for bad debts arising out of other business of the Contractor.

(3) Proposal expenses and costs of proposals.

(4) Bonuses and similar compensation under any other name, which:

(i) Are not pursuant to an agreement between the Contractor and employee prior to the rendering of the services or an established plan consistently followed by the Contractor or,

(ii) Are in excess of those costs which are allowable by the Internal Revenue Code and regulations thereunder, or

(iii) Provide total compensation to an employee in excess of reasonable compensation for the services rendered.

(5) Central and branch office expenses of the Contractor, except as specifically set forth in the contract.

(6) Commissions, bonuses, and fees (under whatever name) in connection with obtaining or negotiating for a Government contract or a modification thereto, except when paid to bona fide employees or bona fide established selling organizations maintained by the Contractor for the purpose of obtaining Government business.

(7) Contingency reserves, provisions for.

(8) Contributions and donations, including cash, Contractor-owned property and services, regardless of the recipient.

(9) Depreciation in excess of that calculated by application of methods approved for use by the Internal Revenue Code of 1954, as amended, including the straight-line declining balance (using a rate not exceeding twice the rate which would have been used had the depreciation been computed under the straight-line method), or sum-of-the-years digits method, on the basis of expected useful life, to the cost of acquisition of the related fixed assets less estimated salvage or residual value at the end of the expected useful life.

(10) Dividend provisions or payments and, in the case of sole proprietors and partners, distributions of profit.

(11) Entertainment, including costs of amusement, diversion, social activities; and directly associated costs such as tickets to shows or sports events, meals, lodging, rentals, transportation and gratuities; costs of membership in any social, dining or country club or organization.

(12) Fines and penalties, except, with respect to civil fines and penalties only, if the Contractor demonstrates to the Contracting Officer that (i) Such a civil fine or penalty was incurred as a result of compliance with specific terms and conditions of the contract or written instructions from the Contracting Officer; or (ii) Such a civil fine or penalty was imposed without regard to fault and could not have been avoided by the exercise of due care.

(13) Government-furnished property, except to the extent that cash payment therefor is required pursuant to procedures of DOE applicable to transfers of such property to the Contractor from others.

(14) Insurance (including any provisions of a self-insurance reserve) on any person where the Contractor under the insurance policy is the beneficiary, directly or indirectly; and insurance against loss of or damage to Government property as defined in clause I.84, Property.

(15) Interest, however represented (except (i) Interest incurred in compliance with the contract clause entitled “State and Local Taxes” or, (ii) imputed interest costs relating to leases classified and accounted for as capital leases under generally accepted accounting principles (GAAP), provided that the decision to enter into a capital leasing arrangement has been specifically authorized and approved by the DOE in accordance with applicable procedures and such interest costs are recorded in an appropriately specified DOE account established for such purpose), bond discounts and expenses, and costs of financing and refinancing operations.

(16) Legal, accounting, and consulting services and related costs incurred in connection with the preparation and issuance of stock, rights, organization or reorganization, prosecution or defense of antitrust suits, prosecution of claims against the United States, contesting actions of proposed actions of the United States, and prosecution or defense of patent infringement litigation (unless initiated at the request of DOE, or except where incurred pursuant to the Contractor's performance of the Government-funded technology transfer mission and in accordance with the Insurance -- Litigation and Claims clause).

(17) Losses or expenses:

(i) On, or arising from the sale, exchange, or abandonment of capital assets, including investments;

(ii) On other contracts, including the Contractor's contributed portion under cost-sharing contracts;

(iii) In connection with price reductions to and discount purchases by employees and others from any source;

(iv) That are compensated for by insurance or otherwise or which would have been compensated for by insurance required by law or by written direction of the Contracting Officer but which the Contractor failed to procure or maintain through its own fault or negligence;

(v) That result from willful misconduct or lack of good faith on the part of any of the Contractor's managerial personnel (as that term is defined in the clause of this contract entitled, Property);

(vi) That represent liabilities to third persons that are not allowable under the clause of this contract entitled, Insurance -- Litigation and Claims; or

(vii) That represent liabilities to third persons for which the Contractor has expressly accepted responsibility under other terms of this contract.

(18) Maintenance, depreciation, and other costs incidental to the Contractor's idle or excess facilities (including machinery and equipment), other than reasonable standby facilities.

(19) Membership in trade, business, and professional organizations, except as approved by the Contracting Officer.

(20) Precontract costs, except as expressly made allowable under other provisions in this contract.

(21) Research and Development Costs, unless specifically provided for elsewhere in this contract.

(22) Selling cost, except to the extent they are determined to be reasonable and to be allocable to the contract. Allocability of selling costs to the contract will be determined in the light of reasonable benefit to the agency program arising from such activities as technical, consulting, demonstration, and other services performed for such purposes as applying or adapting the Contractor's product for agency use.

(23) Storage of records pertaining to this contract after completion of operations under this contract, irrespective of contractual or statutory requirement for the preservation of records.

(24) Taxes, fees, and charges in connection with financing, refinancing, or refunding operations, including listing of securities on exchanges, taxes which are paid contrary to the clause entitled “State and Local Taxes,” federal taxes on net income and excess profits, special assessments on land which represent capital improvement and taxes on accumulated funding deficiencies of, or prohibited transactions involving, employee deferred compensation plans pursuant to Section 4971 or Section 4975 of the Internal Revenue Code of 1954, as amended, respectively.

(25) Travel expenses of the officers, proprietors, executives, administrative heads and other employees of the Contractor's central office or branch office organizations concerned with the general management, supervision, and conduct of the Contractor's business as a whole, except to the extent that particular travel is in connection with the contract and approved by the Contracting Officer.

(26) Salary or other compensation (and expenses related thereto) of any individual employed under this contract as a consultant or in another comparable employment capacity who is an employee of another organization and concurrently performing work on a full-time annual basis for that organization under a cost-type contract with DOE, except to the extent that cash payment therefor is required pursuant to the provisions of this contract or procedure of DOE applicable to the borrowing of such an individual from another cost-type Contractor.

(27) Travel by commercial aircraft or travel by other than common carrier that is not necessary for the performance of this contract or the cost of which exceeds the lesser of the lowest available commercial discount airfare, Government contract airfare, or customary standard (coach or equivalent) commercial airfare. Airfare costs in excess of the lowest such airfare are unallowable, except when such accommodations:

(i) Require circuitous routing;

(ii) Require travel during unreasonable hours;

(iii) Excessively prolong travel;

(iv) Result in increased cost that would offset transportation savings;

(v) Would offer accommodations not reasonably adequate for the physical or medical needs of the traveler; or

(vi) Are not reasonably available to meet necessary mission requirements.

Individual Contractor determinations of nonavailability of commercial discount airfare or Government contract airfare will not be contested by DOE when the Contractor can reasonably demonstrate such nonavailability or, on an overall basis, that established policies and procedures result in the routine use of the lowest available airfare. However, in order for air travel costs in excess of customary standard airfare to be allowable, the Contractor must justify and document the applicable condition(s) set forth above.

(28) Special construction industry "funds" financed by employer contributions for such purposes as methods and materials research, public and industry relations, market development, and disaster relief, except as specifically provided elsewhere in this contract.

(29) Late premium payment charges related to employee deferred compensation plan insurance.

(30) Facilities capital cost of money. (CAS 414 and CAS 417).

(31) Contractor costs incurred to influence either directly or indirectly --

(i) Legislative action on any matter pending before Congress, a State legislature, or a legislative body of a political subdivision of a State; or

(ii) Federal, State, or executive body of a political subdivision of a State action on regulatory and contract matters as described in the "Political Activity Cost Prohibition" clause of this contract.

(32) Commercial automobile rental expenses, unless approved by the Contracting Officer or authorized in Appendix D.1.

(33) Costs incurred in connection with any criminal, civil or administrative proceeding commenced by the Federal Government or a State, local or foreign government, as provided in the Clause titled "Cost Prohibitions Related to Legal and Other Proceedings" incorporated elsewhere in this contract.

(34) Costs of alcoholic beverages.

(35) Contractor employee travel costs incurred for lodging, meals and incidental expenses which exceed on a daily basis the applicable maximum per diem rates in effect for Federal civilian employees at the time of travel. When the applicable maximum per diem rate is inadequate due to special or unusual situations, the Contractor may pay employees for actual expenses in excess of such per diem rate limitation. To be allowable, however, such payments must be properly authorized by an officer or appropriate official of the Contractor and shall not exceed the higher amounts that may be authorized for Federal civilian employees in a similar situation.

(36) Notwithstanding any other provision of this contract, the costs of bonds and insurance are unallowable to the extent they are incurred to protect and indemnify the Contractor and/or subcontractor against otherwise unallowable costs, unless such insurance or bond is required by law, the express terms of this contract, or is authorized in writing by the Contracting Officer. The cost of commercial insurance to protect the Contractor against the costs of correcting its own defects in materials or workmanship is an unallowable cost.

(37) Costs of gifts; however, gifts do not include awards for performance or awards made in recognition of employee achievements pursuant to an established Contractor plan or policy.

(38) The costs of recreation, registration fees of employees participating in competitive fitness promotions, team activities, and sporting events except for the costs of employees' participation in company sponsored intramural sports teams or employee organizations designed to improve company loyalty, team work, or physical fitness.

CLAUSE I.79 - DEAR 970.5204-15 OBLIGATION OF FUNDS (APR 1994) (Modification)

(a) Obligation of Funds. The amount presently obligated by the Government with respect to this contract is $17,632,593 dollars. Such amount may be increased unilaterally by DOE by written notice to the Contractor and may be increased or decreased by written agreement of the Parties (whether or not by formal modification of this contract). Estimated collections from others for work and services to be performed under this contract are not included in the amount presently obligated. Such collections, to the extent actually received by the Contractor, shall be processed and accounted for in accordance with applicable requirements imposed by the Contracting Officer pursuant to the Laws, regulations, and DOE directives clause of this contract. Nothing in this paragraph (a) is to be construed as authorizing the Contractor to exceed limitations stated in financial plans established by DOE and furnished to the Contractor from time to time under this contract.

(b) Limitation on payment by the Government. Except as otherwise provided in this contract and except for costs which may be incurred by the Contractor pursuant to the clause entitled “Termination”, or costs of claims allowable under the contract occurring after completion or termination and not released by the Contractor at the time of financial settlement of the contract in accordance with the clause entitled “Payments and Advances”, payment by the Government under this contract on account of allowable costs shall not, in the aggregate, exceed the amount obligated with respect to this contract, less the Contractor's fee. Unless expressly negated in this contract, payment on account of those costs excepted in the preceding sentence which are in excess of the amount obligated with respect to this contract shall be subject to the availability of (1) collections accruing to the Contractor in connection with the work under this contract and processed and accounted for in accordance with applicable requirements imposed by the Contracting Officer pursuant to the Laws, regulations and DOE directives clause of this contract, and (2) Other funds which DOE may legally use for such purpose, provided DOE will use its best efforts to obtain the appropriation of funds for this purpose if not otherwise available.

(c) Notices--Contractor excused from further performance. The Contractor shall notify DOE in writing whenever the unexpended balance of available funds (including collections available under paragraph (a) of this clause), plus the Contractor's best estimate of collections to be received and available during the forty-five (45) day period hereinafter specified, is in the Contractor's best judgment sufficient to continue contract operations at the programmed rate for only forty-five (45) days and to cover the Contractor's unpaid fee, and outstanding encumbrances and liabilities on account of costs allowable under the contract at the end of such period. Whenever the unexpended balance of available funds (including collections available under paragraph (a) of this clause), less the amount of the Contractor's fee then earned but not paid, is in the Contractor's best judgment sufficient only to liquidate outstanding encumbrances and liabilities on account of costs allowable under this contract, the Contractor shall immediately notify DOE and shall make no further encumbrances or expenditures (except to liquidate existing encumbrances and liabilities), and, unless the Parties otherwise agree, the Contractor shall be excused from further performance (except such performance as may become necessary in connection with termination by the Government) and the performance of all work hereunder will be deemed to have been terminated for the convenience of the Government in accordance with the provisions of the clause entitled “Termination”.

(d) Financial plans; cost and encumbrance limitations. In addition to the limitations provided for elsewhere in this contract, DOE may, through financial plans, such as Approved Funding Programs, or other directives issued to the Contractor, establish controls on the costs to be incurred and encumbrances to be made in the performance of the contract work. Such plans and directives may be amended or supplemented from time to time by DOE. The Contractor hereby agrees (1) To comply with the specific limitations (ceilings) on costs and encumbrances set forth in such plans and directives, (2) To comply with other requirements of such plans and directives, and (3) To notify DOE promptly, in

writing, whenever it has reason to believe that any limitation on costs and encumbrances will be exceeded or substantially underrun.

(e) Government's right to terminate not affected. The giving of any notice under this clause shall not be construed to waive or impair any right of the Government to terminate the contract under the provisions of the clause entitled “Termination”.

CLAUSE I.80 - DEAR 970.5204-16 PAYMENTS AND ADVANCES (JUN 1997)(DEVIATION)

(a) Payment of fixed-fee. The fixed-fee shall be paid to the Contractor in equal monthly installments. Fixed-fee payments shall be made by direct payment or withdrawn from funds advanced or available under this contract, as determined by the Contracting Officer. The Contracting Officer may offset against any such fee payment, the amounts owed to the Government by the Contractor, including any amounts owed for disallowed costs under this contract. No fixed-fee may be withdrawn under the Department of Health and Human Services Report and Collection System without prior written approval of the Contracting Officer.

(b) Payments on Account of Allowable Costs. The Contracting Officer and the Contractor shall agree as to the extent to which payment for allowable costs or payments for other items specifically approved in writing by the Contracting Officer shall be made from advances of Government funds. When pension contributions are paid by the Contractor to the retirement fund less frequently than quarterly, accrued costs therefor shall be excluded from costs for payment purposes until such costs are paid. If pension contributions are paid on a quarterly or more frequent basis, accrual therefor may be included in costs for payment purposes, provided that they are paid to the fund within 30 days after the close of the period covered. If payments are not made to the fund within such 30-day period, pension contribution costs shall be excluded from cost for payment purposes until payment has been made.

(c) Special financial institution account-use. All advances of Government funds shall be withdrawn by the Contractor utilizing the Department’s Health and Human Service’s Payment and Collection System pursuant to an agreement prescribed by DOE in favor of the financial institution or, in the option of the Government, shall be made by direct payment or other payment mechanism to the Contractor, and shall be deposited only in the Special Financial Institution Account referred to in the Special Financial Institution Account Agreement, which is incorporated into this contract as Part II, Section J, Appendix C. No part of the funds in the Special Financial Institution Account shall be comingled with any funds of the Contractor or used for a purpose other than that of making payments for costs allowable and, if applicable, fees earned under this contract or payments for other items specifically approved in writing by the Contracting Officer. If the Contracting Officer determines that the balance of such special financial institution account exceeds the Contractor's current needs, the Contractor shall promptly make such disposition of the excess as the Contracting Officer may direct.

(d) Title to funds advanced. Title to the unexpended balance of any funds advanced and of any special financial institution account established pursuant to this clause shall remain in the Government and be superior to any claim or lien of the financial institution of deposit or others. It is understood that an advance to the Contractor hereunder is not a loan to the Contractor, and will not require the payment of interest by the Contractor, and that the Contractor acquires no right, title or interest in or to such advance other than the right to make expenditures therefrom, as provided in this Clause.

(e) Review and approval of costs incurred. The Contractor shall prepare and submit annually as of September 30, a Cost Management Report, Form DOE 533M, summarizing the net costs for the accounting period. The Contractor shall certify the Cost Statement subject to the penalty provisions for unallowable costs as stated in Sections 306 (b) and (i) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 256), as amended. DOE, after audit and appropriate adjustment, will approve such Form. This approval by DOE will constitute an acknowledgment by DOE that the net costs incurred are allowable under the contract and that they have been recorded in the accounts maintained by the Contractor in accordance with DOE accounting policies, but will not relieve the Contractor of responsibility for DOE's assets in its care, for appropriate subsequent adjustments, or for errors later becoming known to DOE.

(f) Financial settlement. The Government shall promptly pay to the Contractor the unpaid balance of allowable costs and fee upon termination of the work, expiration of the term of the contract, or completion of the work and its acceptance by the Government after: (1) compliance by the Contractor with DOE's patent clearance requirements, and (2) the furnishing by the Contractor of:

(i) An assignment of the Contractor's rights to any refunds, rebates, allowances, accounts receivable, collections accruing to the Contractor in connection with the work under this contract, or other credits applicable to allowable costs under the contract;

(ii) A closing financial statement;

(iii) The accounting for Government-owned property required by the Clause entitled, "Property"; and

(iv) A release discharging the Government, its officers, agents, and employees from all liabilities, obligations, and claims arising out of or under this contract subject only to the following exceptions:

(A) Specified claims in stated amounts or in estimated amounts where the amounts are not susceptible to exact statement by the Contractor;

(B) Claims, together with reasonable expenses incidental thereto, based upon liabilities of the Contractor to third parties arising out of the

performance of this contract; provided that such claims are not known to the Contractor on the date of the execution of the release; and provided further that the Contractor gives notice of such claims in writing to the Contracting Officer promptly, but not more than one (1) year after the Contractor's right of action first accrues. In addition, the Contractor shall provide prompt notice to the Contracting Officer of all potential claims under this clause, whether in litigation or not (see also Contract Clause I.91, DEAR 970.5204-31, "Insurance - Litigation and Claims");

(C) Claims for reimbursement of costs (other than expenses of the Contractor by reason of any indemnification of the Government against patent liability), including reasonable expenses incidental thereto, incurred by the Contractor under the provisions of this contract relating to patents; and

(D) Claims recognizable under the clause entitled, "Nuclear Hazards Indemnity Agreement".

In arriving at the amount due the Contractor under this Clause, there shall be deducted, any claim which the Government may have against the Contractor in connection with this contract, and deductions due under the terms of this contract, and not otherwise recovered by or credited to the Government. The unliquidated balance of the Special Financial Institution Account may be applied to the amount due and any balance shall be returned to the Government forthwith.

(g) Claims. Claims for credit against funds advanced for payment shall be accompanied by such supporting documents and justification as the Contracting Officer shall prescribe.

(h) Discounts. The Contractor shall take and afford the Government the advantage of all known and available cash and trade discounts, rebates, allowances, credits, salvage, and commissions unless the Contracting Officer finds that action is not in the best interest of the Government.

(i) Collections. All collections accruing to the contractor in connection with the work under this contract, except for the contractor’s fee and royalties or other income accruing to the contractor from technology transfer activities in accordance with this contract, shall be Government property and shall be processed and accounted for in accordance with applicable requirements imposed by the Contracting Officer pursuant to the Laws, regulations, and DOE directives clause of this contract and, to the extent consistent with those requirements, shall be deposited in the Special Financial Institution Account or otherwise made available for payment of allowable costs under this contract, unless otherwise directed by the Contracting Officer.

(j) Direct payment of charges. The Government reserves the right, upon ten days written notice from the Contracting Officer to the Contractor, to pay directly to the persons concerned, all amounts due which otherwise would be allowable under this contract.

Any payment so made shall discharge the Government of all liability to the Contractor therefor.

CLAUSE I.81 - DEAR 970.5204-17 POLITICAL ACTIVITY COST PROHIBITION (DEC 1997)

(a) Pursuant to the allowable cost provisions established elsewhere under the contract, costs associated with the following activities are not reimbursable under the contract:

(1) Attempts to influence the outcome of any Federal, State, or local election, referendum, initiative, or similar procedure, through in-kind or cash contributions, endorsements, publicity, or similar activities;

(2) Establishing, administering, contributing to, or paying the expenses of a political party, campaign, political action committee, or other organization established for the purpose of influencing the outcomes of elections;

(3) Any attempt to influence (i) the introduction of Federal or State legislation, or (ii) the enactment or modification of any pending Federal or State legislation through communication with any member or employee of the Congress or State legislature (including efforts to influence state or local officials to engage in similar lobbying activity), or with any Government official or employee in connection with a decision to sign or veto enrolled legislation;

(4) Any attempt to influence (i) the introduction of Federal or State legislation, or (ii) the enactment or modification of any pending Federal or State legislation by preparing, distributing or using publicity or propaganda, or by urging members of the general public or any segment thereof to contribute to or participate in any mass demonstration, march, rally, fund raising drive, lobbying campaign or letter writing or telephone campaign; or

(5) Legislative liaison activities, including attendance at legislative sessions or committee hearings, gathering information regarding legislation, and analyzing the effect of legislation, when such activities are carried on in support of or in knowing preparation for an effort to engage in unallowable activities.

(6) Contractor costs incurred to influence (directly or indirectly) Federal, State, or local executive branch action on regulatory and contract matters.

(b) Costs of the following activities are excepted from the coverage of paragraph (a) of this clause; provided that the resultant contract costs are reasonable and otherwise comply with the allowable cost provisions of the contract:

(1) Providing Members of Congress, their staff members or staff of cognizant legislative committees, in response to a request (written or oral, prior or contemporaneous) from Members of Congress, their staff members or staff of

cognizant legislative committees, or as otherwise directed by the Contracting Officer, information or expert advice of a factual, technical, or scientific nature, with respect to topics directly related to the performance of the contract or proposed legislation. In providing this information or expert advice, the Contractor shall indicate to the recipient that it is not presenting the views of DOE. Reasonable costs for transportation, lodging or meals incurred by Contractor employees for the purpose of providing such information or expert advice shall also be reimbursable, provided the request for such information or expert advice is a prior written request signed by a Member of Congress, and provided such costs also comply with the allowable cost provisions of the contract.

(2) Providing State legislatures or subdivisions thereof, their staff members, or staff of cognizant legislative committees, in response to a prior written request from a State legislator, or as otherwise directed by the Contracting Officer, information or expert advice of factual, technical, or scientific nature, with respect to topics directly related to the performance of the contract or proposed legislation. In providing this information or expert advice, the Contractor shall indicate to the recipient that it is not presenting the views of DOE. Reasonable costs for transportation, lodging, or meals incurred by Contractor employees shall be reimbursable, provided such costs also comply with the allowable costs provision of the contract.

(3) Any lobbying made unallowable under subparagraph (a)(3) above to influence State legislation in order to directly reduce contract cost, or to avoid material impairment of the Contractor's authority to perform the contract if authorized by the Contracting Officer.

(4) Any activity specifically authorized by statute to be undertaken with funds from the contract.

(c) Unallowable lobbying costs incurred, if any, shall not be charged to DOE, paid for with DOE funds or recorded as allowable cost in DOE's system of accounts.

(d) The Contractor's annual certification submitted as part of its annual claim (i.e., Voucher Accounting for Net Expenditures Accrued required under the clause entitled "Payments and Advances") or cost incurred statement, that the costs claimed are allowable under the contract, shall also serve as the Contractor's certification that the requirements and standards of this clause have been complied with.

(e) The Contractor shall maintain adequate records to demonstrate that the annual certifications of claimed costs as being allowable comply with the requirements of this clause.

(f) Time logs, calendars, or similar records shall not be created for purposes of complying with this clause during any particular calendar month when: (1) An employee engages

in legislative liaison activities (as delineated in paragraphs (a) and (b) of this clause) 25 percent or less of the employee's compensated hours of employment during that calendar month, and (2) within the preceding five-year period, the Contractor has not materially misstated allowable or unallowable costs of any nature, including legislative liaison costs. When conditions (f)(1) and (2) of this clause are met, the Contractor is not required to establish records to support the allowability of claimed costs in addition to records already required or maintained. Also, when conditions (f)(1) and (2) of this Clause are met the absence of time logs, calendars, or similar records will not serve as a basis for disallowing costs by contesting estimates of legislative liaison activity time spent by employees during any calendar month.

(g) During contract performance, the Contractor should resolve, in advance, any significant questions or disagreements between the Contractor and DOE concerning compliance with this clause.

(h) In providing information or expert advice under paragraph (b)(1) and (b)(2) of this clause, the Contractor shall advise the Contracting Officer in advance or as soon as practicable.

CLAUSE I.82 - DEAR 970.5204-19 PRINTING (APR 1984)

(a) To the extent that duplicating or printing services may be required in the performance of this contract, the Contractor shall provide or secure such services in accordance with the Government Printing and Binding Regulations, Title 44 of the U.S. Code, and DOE Directives relative thereto.

(b) The term "Printing" includes the following processes: composition, platemaking, presswork, binding, microform publishing, or the end items produced by such processes. Provided, however, that performance of a requirement under this contract involving the duplication of less than 5,000 copies of a single page, or no more than 25,000 units in the aggregate of multiple pages, will not be deemed to be printing.

(c) Printing services not obtained in compliance with this guidance shall result in the cost of such printing being disallowed.

(d) In all subcontracts hereunder which require printing (as that term is defined in Title I of the U.S. Government Printing and Binding Regulations), the Contractor shall include a provision substantially the same as this clause.

CLAUSE I.83 - DEAR 970.5204-20 MANAGEMENT CONTROLS (AUG 1993) (Modification)

(a) The Contractor shall be responsible for maintaining, as an integral part of its organization, effective systems of management controls for both administrative and programmatic functions. Management controls comprise the plan of organization, methods, and procedures adopted by management to reasonably ensure that: the

mission and functions assigned to the Contractor are properly executed; efficient and effective operations are promoted; resources are safeguarded against waste, loss, mismanagement, unauthorized use, or misappropriation; all encumbrances and costs that are incurred under the contract and fees that are earned are in compliance with applicable clauses and other current terms, conditions, and intended purposes; all collections accruing to the contractor in connection with the work under this contract, expenditures, and all other transactions and assets are properly recorded, managed, and reported; and financial, statistical, and other reports necessary to maintain accountability and managerial control are accurate, reliable, and timely. The systems of controls employed by the Contractor shall be documented and satisfactory to DOE. Such systems shall be an integral part of the Contractor's management functions, including defining specific roles and responsibilities for each level of management, and holding employees accountable for the adequacy of the management systems and controls in their areas of assigned responsibility. The Contractor shall, as part of the internal audit program required elsewhere in this contract, periodically review the management systems and controls employed in programs and administrative areas to ensure that they are adequate to provide reasonable assurance that the objectives of the systems are being accomplished and that these systems and controls are working effectively.

(b) The Contractor shall be responsible for maintaining, as a part of its operational responsibilities, a baseline quality assurance program that implements documented performance, quality standards, and control and assessment techniques.

CLAUSE I.84 - DEAR 970.5204-21 PROPERTY (JUN 1997) (DEVIATION)

(a) Furnishing of Government property. The Government reserves the right to furnish any property or services required for the performance of the work under this contract.

(b) Title to property. Except as otherwise provided by the Contracting Officer, title to all materials, equipment, supplies, and tangible personal property of every kind and description purchased by the Contractor, for the cost of which the Contractor is entitled to be reimbursed as a direct item of cost under this contract, shall pass directly from the vendor to the Government. The Government reserves the right to inspect, and to accept or reject, any item of such property. The Contractor shall make such disposition of rejected items as the Contracting Officer shall direct. Title to other property, the cost of which is reimbursable to the Contractor under this contract, shall pass to and vest in the Government upon (1) issuance for use of such property in the performance of this contract, or (2) commencement of processing or use of such property in the performance of this contract, or (3) reimbursement of the cost thereof by the Government, whichever first occurs. Property furnished by the Government and property purchased or furnished by the Contractor, title to which vests in the Government, under this paragraph are hereinafter referred to as Government property. Title to Government property shall not be affected by the incorporation of the property into or the attachment of it to any property not owned by the Government, nor shall such Government property or any part

thereof, be or become a fixture or lose its identity as personalty by reason of affixation to any realty.

(c) Identification. To the extent directed by the Contracting Officer, the Contractor shall identify Government property coming into the Contractor's possession or custody, by marking and segregating in such a way, satisfactory to the Contracting Officer, as shall indicate its ownership by the Government.

(d) Disposition. The Contractor shall make such disposition of Government property which has come into the possession or custody of the Contractor under this contract as the Contracting Officer may direct during the progress of the work or upon completion or termination of this contract. The Contractor may, upon such terms and conditions as the Contracting Officer may approve, sell, or exchange such property, or acquire such property at a price agreed upon by the Contracting Officer and the Contractor as the fair value thereof. The amount received by the Contractor as the result of any disposition, or the agreed fair value of any such property acquired by the Contractor, shall be applied in reduction of costs allowable under this contract or shall be otherwise credited to account to the Government, as the Contracting Officer may direct. Upon completion of the work or termination of this contract, the Contractor shall render an accounting, as prescribed by the Contracting Officer, of all Government property which had come into the possession or custody of the Contractor under this contract.

(e) Protection of Government Property - Management of high-risk property and classified materials --

(1) The Contractor shall take all reasonable precautions, and such other actions as may be directed by the Contracting Officer, or in the absence of such direction, in accordance with sound business practice, to safeguard and protect Government property in the Contractor's possession or custody.

(2) In addition, the Contractor shall ensure that adequate safeguards are in place, and adhered to, for the handling, control and disposition of high risk property and classified materials throughout the life cycle of the property and materials consistent with the policies, practices and procedures for property management contained in the Federal Property Management Regulations (41 CFR Chapter 101), the Department of Energy Property Management Regulations (41 CFR Chapter 109), and other applicable regulations.

(3) High-risk property is property, the loss, destruction, damage to, or the unintended or premature transfer of which could pose risks to the public, the environment, or the national security interests of the United States. High risk property includes proliferation sensitive, nuclear related dual use, export controlled, chemically or radioactively contaminated, hazardous, and specially designed and prepared property, including property on the militarily critical technologies list.

(f) Risk of loss of Government property.

(1) (i) The Contractor shall not be liable for the loss or destruction of, or damage to, Government property unless such loss, destruction, or damage was caused by any of the following:

(A) Willful misconduct or lack of good faith on the part of the Contractor's managerial personnel;

(B) Failure of the Contractor's managerial personnel to take all reasonable steps to comply with any appropriate written direction of the Contracting Officer to safeguard such property under paragraph (e) of this clause; or

(C) Failure of Contractor managerial personnel to establish, administer, or properly maintain an approved property management system in accordance with paragraph (i)(1) of this clause.

(ii) If, after an initial review of the facts, the Contracting Officer informs the Contractor that there is reason to believe that the loss, destruction of, or damage to the Government property results from conduct falling within one of the categories set forth above, the burden of proof shall be upon the Contractor to show that the Contractor should not be required to compensate the Government for the loss, destruction, or damage.

(2) In the event the Contractor is determined liable for the loss, destruction, or damage to Government property in accordance with (f)(1) of this clause, the Contractor's compensation to the Government shall be determined as follows:

(i) For damaged property, the compensation shall be the cost of repairing such damaged property, plus any costs incurred for temporary replacement of the damaged property. However, the value of repair costs shall not exceed the fair market value of the damaged property. If a fair market value of the property does not exist, the Contracting Officer shall determine the value of such property, consistent with all relevant facts and circumstances.

(ii) For destroyed or lost property, the compensation shall be the fair market value of such property at the time of such loss or destruction, plus any costs incurred for temporary replacement and costs associated with the disposition of destroyed property. If a fair market value of the property does not exist, the Contracting Officer shall determine the value of such property, consistent with all relevant facts and circumstances.

(3) The portion of the cost of insurance obtained by the Contractor that is allocable to coverage of risks of loss referred to in paragraph (f)(1) of this clause is not allowable.

(g) Steps to be taken in event of loss. In the event of any damage, destruction, or loss to Government property in the possession or custody of the Contractor with a value above the threshold set out in the Contractor's approved property management system, the Contractor:

(1) Shall immediately inform the Contracting Officer of the occasion and extent thereof,

(2) Shall take all reasonable steps to protect the property remaining, and

(3) Shall repair or replace the damaged, destroyed, or lost property in accordance with the written direction of the Contracting Officer. The Contractor shall take no action prejudicial to the right of the Government to recover therefore, and shall furnish to the Government, on request, all reasonable assistance in obtaining recovery.

(h) Government property for Government use only. Government property shall be used only for the performance of this contract.

(i) Property Management.

(1) Property Management System.

(i) The Contractor shall establish, administer, and properly maintain an approved property management system of accounting for and control, utilization, maintenance, repair, protection, preservation, and disposition of Government property in its possession under the contract. The Contractor's property management system shall be submitted to the Contracting Officer for approval and shall be maintained and administered in accordance with sound business practice, applicable Federal Property Management Regulations and Department of Energy Property Management Regulations, and such directives or instructions which the Contracting Officer may from time to time prescribe.

(ii) In order for a property management system to be approved, it must provide for:

(A) Comprehensive coverage of property from the requirement identification, through its life cycle, to final disposition;

(B) Employee personal responsibility and accountability for Government-owned property;

(C) Full integration with the Contractor's other administrative and financial systems; and

(D) A method for continuously improving property management practices through the identification of best practices established by "best in class" performers.

(iii) Approval of the Contractor's property management system shall be contingent upon the completion of the baseline inventory as provided in subparagraph (i) (2) of this clause.

(2) Property Inventory.

(i) Unless otherwise directed by the Contracting Officer, the Contractor shall within six months after execution of the contract provide a baseline inventory covering all items of Government property.

(ii) If the Contractor is succeeding another Contractor in the performance of this contract, the Contractor shall conduct a joint reconciliation of the property inventory with the predecessor contractor. The Contractor agrees to participate in a joint reconciliation of the property inventory at the completion of this contract. This information will be used to provide a baseline for the succeeding contract as well as information for closeout of the predecessor contract.

(j) The term "Contractor's managerial personnel" as used in this clause is as defined in Clause H.1, Additional Definitions, and the Contractor's Associate Director for Administration.

(k) The Contractor shall include this clause in Cost reimbursable contracts.

CLAUSE I.85 - DEAR 970.5204-22 CONTRACTOR PURCHASING SYSTEM (NOV 1997) (DEVIATION)

(a) General. The Contractor shall develop, implement, and maintain formal policies, practices, and procedures to be used in the award of subcontracts consistent with this clause, 48 CFR (DEAR) 970.5204-44, and 48 CFR (DEAR) 970.71. The Contractor's purchasing system and methods shall be fully documented, consistently applied, and acceptable to DOE in accordance with 48 CFR (DEAR) 970.7102. The Contractor shall maintain file documentation which is appropriate to the value of the purchase and is adequate to establish the propriety of the transaction and the price paid. The Contractor's purchasing performance will be evaluated against such performance criteria and measures as may be set forth elsewhere in this contract. DOE reserves the right at any time to require that the Contractor submit for approval any or all purchases under

this contract. The Contractor shall not purchase any item or service the purchase of which is expressly prohibited by the written direction of DOE and shall use such special and directed sources as may be expressly required by the DOE Contracting Officer. The Contractor shall manage a Self-Assessment Program and shall submit to the Contracting Officer a copy of Self-Assessment reports in accordance with written direction and guidance provided by the Contracting Officer. DOE reserves the right to review and approve the Contractor's purchasing system in accordance with 48 CFR subpart 44.3, and DOE implementing policy and guidance. The Contractor's approved purchasing system and methods shall include the requirements set forth in paragraphs (b) through (w) of this clause as modified by the provisions of Part III, Section J.7, Appendix G.

(b) Acquisition of utility services. Utility services shall be acquired in accordance with the requirements of 48 CFR 970.41.

(c) Acquisition of real property. Real property shall be acquired in accordance with 48 CFR (DEAR) Subpart 917.74.

(d) Advance notice of proposed subcontract awards. Advance notice shall be provided in accordance with Part III, Section J.7, Appendix G.

(e) Audit of subcontractors

(1) The Contractor shall provide for

(i) periodic post-award audit of cost-reimbursement subcontractors at all tiers, and

(ii) audits, where necessary, to provide a valid basis for pre-award or cost or price analysis.

(2) Responsibility for determining the costs allowable under each cost-reimbursement subcontract remains with the Contractor or next higher-tier subcontractor. The Contractor shall provide, in appropriate cases, for the timely involvement of the Contractor and the DOE Contracting Officer in resolution of subcontract cost allowability.

(3) Where audits of subcontractors at any tier are required, arrangements may be made to have the cognizant Federal agency perform the audit of the subcontract. These arrangements shall be made administratively between DOE and the other agency involved and shall provide for the cognizant agency to audit in an appropriate manner in light of the magnitude and nature of the subcontract. In no case, however, shall arrangements preclude determination by the DOE Contracting Officer of the allowability or unallowability of subcontractor costs claimed for reimbursement by the Contractor.

(4) Allowable costs for cost reimbursable subcontracts are to be determined in accordance with the cost principles of FAR Part 31, appropriate for the type of organization to which the subcontract is to be awarded, as supplemented by 48 CFR (DEAR) Part 931. Allowable costs in the purchase or transfer from Contractor-affiliated sources shall be determined in accordance with 48 CFR (DEAR) 970.7105 and 48 CFR (DEAR) 970.3102-15(b).

(f) Bonds and Insurance.

(1) The Contractor shall require performance bonds in penal amounts as set forth in FAR 28.102-2(a) for all fixed priced and unit-priced construction subcontracts in excess of $100,000. The Contractor shall consider the use of performance bonds in fixed price nonconstruction subcontracts, where appropriate.

(2) For fixed-price, unit-priced and cost-reimbursement construction subcontracts in excess of $100,000 a payment bond shall be obtained on Standard Form 25A modified to name the Contractor as well as the United States of America as obligees. The penal amounts shall be determined in accordance with 48 CFR (FAR) 28.102-2(b).

(3) For fixed-price, unit-priced and cost-reimbursement construction subcontracts, greater than $25,000, but not greater than $100,000, the contractor shall select two or more of the payment protections at 48 CFR (FAR) 28.102-1(b), giving particular consideration to the inclusion of an irrevocable letter of credit as one of the selected alternatives.

(4) A subcontractor may have more than one acceptable surety in both construction and other subcontracts, provided that in no case will the liability of any one surety exceed the maximum penal sum for which it is qualified for any one obligation. For subcontracts other than construction, a co-surety (two or more sureties together) may reinsure amounts in excess of their individual capacity, with each surety having the required underwriting capacity that appears on the list of acceptable corporate sureties.

(g) Buy American. The Contractor shall comply with the provisions of the Buy American Act as reflected in 48 CFR (DEAR) 970.5203-3 and 48 CFR(DEAR) 970.5204-3. The Contractor shall forward determinations of nonavailability of individual items to the DOE Contracting Officer for approval. Items in excess of $100,000 require the prior concurrence of the Head of Contracting Activity. If, however, the Contractor has an approved purchasing system, the Head of the Contracting Activity may authorize the Contractor to make determinations of nonavailability for individual items valued at $100,000 or less.

(h) Construction and Architect-Engineer subcontracts.

(1) Independent estimates. A detailed, independent estimate of costs shall be prepared for all construction work to be subcontracted.

(2) Specifications. Specifications for construction shall be prepared in accordance with the DOE publication entitled, "General Design Criteria Manual."

(3) Prevention of conflict of interest.

(i) The Contractor shall not award a subcontract for construction to the architect-engineer firm or an affiliate that prepared the design. This prohibition does not preclude the award of a "turnkey" subcontract so long as the subcontractor assumes all liability for defects in design and construction and consequential damages.

(ii) The Contractor shall not award both a cost-reimbursement subcontract and a fixed-price subcontract for construction or architect-engineer services or any combination thereof to the same firm where those subcontracts will be performed at the same site.

(iii) The Contractor shall not employ the construction subcontractor or an affiliate to inspect the firm's work. The Contractor shall assure that the working relationships of the construction subcontractor and the subcontractor inspecting its work and the authority of the inspector are clearly defined.

(i) Contractor-Affiliated sources. Equipment, materials, supplies, or services from a Contractor-Affiliated source shall be purchased or transferred in accordance with 48 CFR (DEAR) 970.7105.

(j) Contractor-subcontractor relationship. The obligations of the Contractor under paragraph (a) of this clause, including the development of the purchasing system and methods, and purchases made pursuant thereto, shall not relieve the Contractor of any obligation under this Contract (including, among other things, the obligation to properly supervise, administer, and coordinate the work of subcontractors). Subcontracts shall be in the name of the Contractor, and shall not bind or purport to bind the Government.

(k) Government property. Identification, inspection, maintenance, protection, and disposition of Government property shall conform with the policies and principles of FAR Part 45, 48 CFR (DEAR) 945, the Federal Property Management Regulations 41 CFR 101, the DOE Property Management Regulations 41 CFR 109, and their contracts.

(l) Indemnification. Except for Price-Anderson Nuclear Hazards Indemnity, no subcontractor may be indemnified except with the prior approval of the procurement executive.

(m) Leasing of motor vehicles. Contractors shall comply with FAR 8.11 and 48 CFR (DEAR) 908.11.

(n) Make-or-Buy Plans. Acquisition of property and services shall be obtained on a least-cost basis, consistent with the requirements of the Make-or-Buy Plan clause of this contract and the Contractor's approved Make-or-Buy Plan.

(o) Management, acquisition and use of information resources. Requirements for automatic data processing resources and telecommunications facilities, services, and equipment, shall be reviewed and approved in accordance with applicable DOE orders and regulations regarding information resources.

(p) Priorities, allocations and allotments. Priorities, allocations and allotments shall be extended to appropriate subcontracts in accordance with the clause or clauses of this contract dealing with priorities and allocations.

(q) Purchase of special items. Purchase of the following items shall be in accordance with the following provisions of 48 CFR (DEAR) 908.71 and the Federal Property Management Regulations, 41 CFR 101:

(1) Motor vehicles - 48 CFR 908.7101
(2) Aircraft - 48 CFR 908.7102
(3) Security cabinets - 48 CFR 908.7106
(4) Alcohol - 48 CFR 908.7107
(5) Helium - 48 CFR 908.7108
(6) Fuels and packaged petroleum products - 48 CFR 908.7109
(7) Coal - 48 CFR 908.7110
(8) Arms and ammunition - 48 CFR 908.7111
(9) Heavy water - 48 CFR 908.7121(a)
(10) Precious metals - 48 CFR 908.7121(b)
(11) Lithium - 48 CFR 908.7121(c)
(12) Products and services of the blind and severely handicapped - 41 CFR 101-26.701
(13) Products made in Federal penal and correctional institutions - 41 CFR 101-26.702

(r) Purchase vs. Lease determinations. Contractors shall determine whether required equipment and property should be purchased or leased, and establish appropriate thresholds for application of lease vs. purchase determinations. Such determinations shall be made:

(1) at time of original acquisition;

(2) when lease renewals are being considered; and

(3) at other times as circumstances warrant.

(s) Quality assurance. Contractors shall provide no less protection for the Government in its subcontracts than is provided in the prime contract.

(t) Setoff of assigned subcontractor proceeds. Where a subcontractor has been permitted to assign payments to a financial institution, the assignment shall treat any right of setoff in accordance with 48 CFR (DEAR) 932.803.

(u) Strategic and critical materials. The Contractor may use strategic and critical materials in the National Defense Stockpile.

(v) Termination. When subcontracts are terminated as a result of the termination of all or a portion of this contract, the Contractor shall settle with subcontractors in conformity with the policies and principles relating to settlement of prime contracts in FAR Subparts 49.1, 49.2 and 49.3. When subcontracts are terminated for reasons other than termination of this contract, the Contractor shall settle such subcontracts in general conformity with the policies and principles in FAR Subparts 49.1, 49.2, 49.3 and 49.4. Each such termination shall be documented and consistent with the terms of this contract. Terminations which require approval by the Government shall be supported by accounting data and other information as may be directed by the Contracting Officer.

(w) Unclassified controlled nuclear information. Subcontracts involving unclassified uncontrolled nuclear information shall be treated in accordance with 10 CFR Part 1017.

CLAUSE I.86 - DEAR 970.5204-23 STATE AND LOCAL TAXES (APR 1984) (DEVIATION)

(a) The Contractor agrees to notify the Contracting Officer of any State or local tax, fee, or charge levied or purported to be levied on or collected from the Contractor with respect to the contract work, any transaction thereunder, or property in the custody or control of the Contractor and constituting an allowable item of cost if due and payable, but which the Contractor has reason to believe, or the Contracting Officer has advised the Contractor, is or may be inapplicable or invalid; and the Contractor further agrees to refrain from paying any such tax, fee, or charge unless authorized, in writing, by the Contracting Officer. Any State or local tax, fee, or charge paid with the approval of the Contracting Officer or on the basis of advice from the Contracting Officer that such tax, fee, or charge is applicable and valid, and which would otherwise be an allowable item of cost, shall not be disallowed as an item of cost by reason of any subsequent ruling or determination that such tax, fee, or charge was, in fact, inapplicable or invalid.

(b) The Contractor agrees to take such action as may be required or approved by the Contracting Officer to cause any State or local tax, fee, or charge which would be an allowable cost to be paid under protest; and to take such action as may be required or approved by the Contracting Officer to seek recovery of any payments made, including assignment to the Government or its designee of all rights to an abatement or refund thereof, and granting permission for the Government to join with the Contractor in any

proceedings for the recovery thereof or to sue for recovery in the name of the Contractor. If the Contracting Officer directs the Contractor to institute litigation to enjoin the collection of or to recover payment of any such tax, fee, or charge referred to above, or if a claim or suit is filed against the Contractor for a tax, fee, or charge it has refrained from paying in accordance with this Clause, the procedures and requirements of the Clause entitled “Insurance - Litigation and Claims,” shall apply and the costs and expenses incurred by the Contractor shall be allowable items of costs, as provided in this contract, together with the amount of any judgment rendered against the Contractor.

(c) The Government shall hold the Contractor harmless from penalties and interest incurred through compliance with this clause. All recoveries or credits in respect of the foregoing taxes, fees, and charges (including interest) shall inure to and be for the sole benefit of the Government.

CLAUSE I.87 - DEAR 970.5204-25 WORKMANSHIP AND MATERIALS (APR 1984)

(a) Grade of workmanship and materials. Unless otherwise directed by the Contracting Officer or expressly provided for by specifications issued under this contract:

(1) All workmanship shall be first class; and

(2) All articles, equipment and materials incorporated in the work are to be:

(i) Suitable grade of their respective kinds for the purpose;

(ii) In accordance with any applicable drawings and specifications; and

(iii) Installed to the satisfaction and with the approval of the Contracting Officer if such right of approval is specially required by the Contracting Officer. Where equipment, materials, or articles are referred to in the specifications as "equal to" any particular standard, the Contracting Officer shall decide the question of equality.

(b) Samples and tests results. If the Contracting Officer so requires, the Contractor shall submit for approval samples of or test results on any materials proposed to be incorporated in the work before making any commitment for the purchase of such materials.

CLAUSE I.88 - DEAR 970.5204-27(b) CONSULTANT OR OTHER COMPARABLE EMPLOYMENT SERVICES (MAY 1989)

The Contractor shall require all employees who are employed full-time (an individual who performs work under the cost-type contract on a full-time annual basis) or part-time (50 percent or more of regular annual compensation received under terms of a contract with DOE) on the

contract work to disclose to the Contractor all consultant or other comparable employment services which the employees propose to undertake for others. The Contractor shall transmit to the Contracting Officer all information obtained from such disclosures. The Contractor will require any employee who will be employed full-time on the contract work to agree, as a condition of his participation in such work, that he will not perform consultant or other comparable employment services for another DOE Contractor in the same or related energy field or another organization except with the prior approval of the Contractor. If the Contractor believes, with respect to any employee who is employed full-time on the contract work, that any proposed consultant or other comparable employment service may involve:

(1) A rate of remuneration significantly in excess of the employee's regular rate of remuneration;

(2) a significant question concerning possible conflict with DOE's policies regarding conduct of employees of DOE's Contractors;

(3) the Contractor's responsibility to report fully and promptly to DOE all significant research and development information; or

(4) the patent provisions of the Contractor's contract with DOE,

the Contractor shall obtain the prior approval of the Contracting Officer for such consultant or other comparable employment service.

CLAUSE I.89 - DEAR 970.5204-28 ASSIGNMENT (APR 1984)

Neither this contract nor any interest therein nor claim thereunder shall be assigned or transferred by the Contractor except as expressly authorized, in writing, by the Contracting Officer.

CLAUSE I.90 - DEAR 970.5204-29 PERMITS OR LICENSES (APR 1984)

Except as otherwise directed by the Contracting Officer, the Contractor shall procure all necessary permits or licenses and abide by all applicable laws, regulations, and ordinances of the United States and of the state, territory, and political subdivision in which the work under this contract is performed.

CLAUSE I.91 - DEAR 970.5204-31 INSURANCE--LITIGATION AND CLAIMS (JUN 1997) (DEVIATION)

(a) The Contractor may, with the prior written authorization of the Contracting Officer, and shall, upon the request of the Government, initiate litigation against third parties, including proceedings before administrative agencies, in connection with this contract.

The Contractor shall proceed with such litigation in good faith and as directed from time to time by the Contracting Officer.

(b) The Contractor shall give the Contracting Officer immediate notice in writing of any legal proceeding, including any proceeding before an administrative agency, filed against the Contractor arising out of the performance of this contract. Except as otherwise directed by the Contracting Officer, in writing, the Contractor shall furnish immediately to the Contracting Officer copies of all pertinent papers received by the Contractor with respect to such action. The Contractor, with the prior written authorization of the Contracting Officer, shall proceed with such litigation in good faith and as directed from time to time by the Contracting Officer.

(c) (1) Except as provided in paragraph (c)(2) of this clause, the Contractor shall procure and maintain such bonds and insurance as required by law or approved in writing by the Contracting Officer.

(2) The Contractor may, with the approval of the Contracting Officer, maintain a self-insurance program; provided that, with respect to workers' compensation, the Contractor is qualified pursuant to statutory authority.

(3) All bonds and insurance required by this clause shall be in a form and amount and for those periods as the Contracting Officer may require or approve and with sureties and insurers approved by the Contracting Officer.

(d) The Contractor agrees to submit for the Contracting Officer's approval, to the extent and in the manner required by the Contracting Officer, any other bonds and insurance that are maintained by the Contractor in connection with the performance of this contract and for which the Contractor seeks reimbursement. If an insurance cost (whether a premium for commercial insurance or related to self-insurance) includes a portion covering costs made unallowable elsewhere in the contract, and the share of the cost for coverage for the unallowable cost is determinable, the portion of the cost that is otherwise an allowable cost under this contract is reimbursable to the extent determined by the Contracting Officer.

(e) Except as provided in subparagraphs (g) and (h) of this clause, or specifically disallowed elsewhere in this contract, the Contractor shall be reimbursed--

(1) For that portion of the reasonable cost of bonds and insurance allocable to this contract required in accordance with contract terms or approved under this clause, and

(2) For liabilities (and reasonable expenses incidental to such liabilities, including litigation costs) to third persons not compensated by insurance or otherwise without regard to and as an exception to the clause of this contract entitled, Obligation of Funds, (48 CFR (DEAR) 970.5204-15).

(f) The Government's liability under paragraph (e) of this clause is subject to the availability of appropriated funds. Nothing in this contract shall be construed as implying that the Congress will, at a later date, appropriate funds sufficient to meet deficiencies.

(g) Notwithstanding any other provision of this contract, the Contractor shall not be reimbursed for liabilities (and expenses incidental to such liabilities, including litigation costs, counsel fees, judgment and settlements)--

(1) Which are otherwise unallowable by law or the provisions of this contract; or,

(2) For which the Contractor has failed to insure or to maintain insurance as required by law, this contract, or by the written direction of the Contracting Officer.

(h) In addition to the cost reimbursement limitations contained in DEAR 970.3101-3, and notwithstanding any other provision of this contract, the Contractor's liabilities to third persons, including employees but excluding costs incidental to workers' compensation actions, (and any expenses incidental to such liabilities, including litigation costs, counsel fees, judgments and settlements) shall not be reimbursed if such liabilities were caused by Contractor managerial personnel's

(1) Willful misconduct,

(2) Lack of good faith, or

(3) Failure to exercise prudent business judgment, which means failure to act in the same manner as a prudent person in the conduct of competitive business; or, in the case of a non-profit educational institution, failure to act in the manner that a prudent person would under the circumstances prevailing at the time the decision to incur the cost is made.

(i) The burden of proof shall be upon the Contractor to establish that costs covered by paragraph (h) of this clause are allowable and reasonable if, after an initial review of the facts, the Contracting Officer challenges a specific cost or informs the Contractor that there is reason to believe that the cost results from willful misconduct, lack of good faith, or failure to exercise prudent business judgment by Contractor managerial personnel.

(j) (1) All litigation costs, including counsel fees, judgments and settlements shall be differentiated and accounted for by the Contractor so as to be separately identifiable. If the Contracting Officer provisionally disallows such costs, then the Contractor may not use funds advanced by DOE under the contract to finance the litigation.

(2) Punitive damages are not allowable unless the act or failure to act which gave rise to the liability resulted from compliance with specific terms and conditions of the contract or written instructions from the Contracting Officer.

(3) The portion of the cost of insurance obtained by the Contractor that is allocable to coverage of liabilities referred to in paragraph (g)(1) of this clause is not allowable.

(4) The term "Contractor's managerial personnel" is defined in paragraph (d) of Clause H.1, Additional Definitions.

(k) The Contractor may at its own expense and not as an allowable cost procure for its own protection insurance to compensate the Contractor for any unallowable or unreimbursable costs incurred in connection with contract performance.

(l) If any suit or action is filed or any claim is made against the Contractor, the cost and expense of which may be reimbursable to the Contractor under this contract, and the risk of which is then uninsured or is insured for less than the amount claimed, the Contractor shall --

(1) Immediately notify the Contracting Officer and promptly furnish copies of all pertinent papers received;

(2) Authorize Department representatives to collaborate with: in-house or DOE-approved outside counsel in settling or defending the claim; or counsel for the insurance carrier in settling or defending the claim if the amount of the liability claimed exceeds the amount of coverage, unless precluded by the terms of the insurance contract; and

(3) Authorize Department representatives to settle the claim or to defend or represent the Contractor in and/or to take charge of any litigation, if required by the Department, if the liability is not insured or covered by bond. In any action against more than one Department Contractor, the Department may require the Contractor to be represented by common counsel. Counsel for the Contractor may, at the Contractor's own expense, be associated with the Department representatives in any such claim or litigation.

CLAUSE I.92 - DEAR 970.5204-33(a) PRIORITIES AND ALLOCATIONS (APR 1994)

The Contractor shall follow the rules and procedures of the Defense Priorities and Allocations System (DPAS) regulation (15 CFR Part 700) in obtaining controlled materials and other products and materials needed for contract performance.

CLAUSE I.93 - DEAR 970.5204-33(b) PRIORITIES AND ALLOCATIONS -DOMESTIC ENERGY SUPPLIES (APR 1994)

A program or project under this contract may be determined to be eligible for priorities and allocations support as provided for by Section 101(c) of the Defense Production Act of 1950, as amended by the Energy Policy and Conservation Act (Pub. L 94-163, 42 U.S.C. 6201 et seq.) if it is determined that its purpose is to maximize domestic energy supplies. Eligibility is dependent on an executive decision on a case-by-case basis with the decision being jointly made by the Department of Energy and Commerce.

DOE regulations regarding material allocation and priority performance under contracts or orders to maximize domestic energy supplies can be found at Part 216 of Title 10 of the Code of Federal Regulations (10 CFR Part 216).

Additional guidance is provided by DOE Publication MA-0192, "Priorities and Allocations Support for Energy: Keeping Energy Programs on Schedule", dated August 1985, as it may from time to time be revised. Copies may be obtained by written request to: Department of Energy, Office of Scientific and Technical Information (OSTI), Post Office Box 62, Oak Ridge, Tennessee 37830.

CLAUSE I.94 - DEAR 970.5204-38 GOVERNMENT FACILITY SUBCONTRACT APPROVAL (APR 1994) (DEVIATION)

Upon request of the Contracting Officer and acceptance thereof by the Contractor, the Contractor shall procure, by subcontract, the construction of new facilities or the alteration or repair of Government-owned facilities at the plant. Any subcontract entered into under this paragraph shall be subject to the written approval of the Contracting Officer, in accordance with the provisions of Part III, Section J.7, Appendix G, and shall contain the provisions relative to labor and wages required by law to be included in contracts for the construction, alteration, and/or repair, including painting and decorating, of a public building or public work.

CLAUSE I.95 - DEAR 970.5204-39 ACQUISITION AND USE OF ENVIRONMENTALLY PREFERABLE PRODUCTS AND SERVICES (OCT 1995) (DEVIATION)

(a) In the performance of this contract, the Contractor shall comply with the requirements of the following issuances:

(1) Executive Order 13101 of September 14, 1998, entitled “Greening the Government Through Waste Prevention, Recycling, and Federal Acquisition."

(2) Section 6002 of the Resource Conservation and Recovery Act (RCRA) of 1976, as amended (42 U.S.C. 6962, Pub. L. 94-580, 90 Stat. 2822).

(3) Title 40 of the Code of Federal Regulations, Subchapter 1, Part 247 (Comprehensive Guidelines for the Procurement of Products Containing Recovered Materials) and such other Subchapter 1 parts or comprehensive procurement guidelines as the environmental protection agency may issue from

time to time as guidelines for the procurement of products that contain recovered/recycled materials.

(4) "U.S. Department of Energy Affirmative Procurement Program for Products containing Recovered Materials" and related guidance document(s), as they are identified in writing by the department.

(b) The Contractor shall prepare and submit reports on matters related to the use of environmentally preferable products and services from time to time in accordance with written direction (e.g., in a specified format) from the Contracting Officer.

(c) In complying with the requirements of paragraph (a) of this clause, the Contractor shall coordinate its concerns and seek implementing guidance on Federal and Departmental policy, plans, and program guidance with the DOE recycling point of contact, who shall be identified by the Contracting Officer. Reports required pursuant to paragraph (b) of this clause, shall be submitted through the DOE recycling point of contact.

CLAUSE I.96 - DEAR 970.5204-40 TECHNOLOGY TRANSFER MISSION (JAN 1996) - ALTERNATE I (JAN 1996)

This clause has as its purpose implementation of the National Competitiveness Technology Transfer Act of 1989 (Sections 3131, 3132, 3133, and 3157 of Pub. L. 101-189 and as amended by Pub. L. 103-160, Sections 3134 and 3160). The Contractor shall conduct technology transfer activities with a purpose of providing benefit from Federal research to U.S. industrial competitiveness.

(a) Authority.

(1) In order to ensure the full use of the results of research and development efforts of, and the capabilities of, the Laboratory, technology transfer, including Cooperative Research and Development Agreements (CRADAs), is established as a mission of the Laboratory consistent with the policy, principles and purposes of Sections 11(a)(1) and 12(g) of the Stevenson-Wydler Technology Innovation Act of 1980, as amended (15 U.S.C. 3710a); Section 3132(b) of Pub. L. 101-189, Sections 3134 and 3160 of P.L. 103-160, and of Chapter 38 of the Patent Laws (35 U.S.C. 200 et seq.); Section 152 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2182); Section 9 of the Federal Nonnuclear Energy Research and Development Act of 1974 (42 U.S.C. 5908); and Executive Order 12591 of April 10, 1987.

(2) In pursuing the technology transfer mission, the Contractor is authorized to conduct activities including but not limited to: identifying and protecting Intellectual Property made, created or acquired at or by the Laboratory; negotiating licensing agreements and assignments for Intellectual Property made, created or acquired at or by the Laboratory that the Contractor controls or

owns; bailments; negotiating all aspects of and entering into CRADAs; providing technical consulting and personnel exchanges; conducting science education activities and reimbursable Work for Others (WFO); providing information exchanges; and making available laboratory or weapon production user facilities. It is fully expected that the Contractor shall use all of the mechanisms available to it to accomplish this technology transfer mission, including, but not limited to, CRADAs, user facilities, WFO, science education activities, consulting, personnel, assignments, and licensing in accordance with this clause.

(b) Definitions.

(1) "Contractor's Laboratory Director" means the individual who has supervision over all or substantially all of the Contractor's operations at the Laboratory.

(2) "Intellectual Property" means patents, trademarks, copyrights, mask works, protected CRADA information, and other forms of comparable property rights protected by Federal Law and other foreign counterparts.

(3) "Cooperative Research and Development Agreement (CRADA)" means any agreement entered into between the Contractor as operator of the Laboratory, and one or more parties including at least one non-Federal party under which the Government, through its laboratory, provides personnel, services, facilities, equipment, intellectual property, or other resources with or without reimbursement (but not funds to non-Federal parties) and the non-Federal parties provide funds, personnel, services, facilities, equipment, intellectual property, or other resources toward the conduct of specified research or development efforts which are consistent with the missions of the Laboratory; except that such term does not include a procurement contract, grant, or cooperative agreement as those terms are used in sections 6303, 6304, and 6305 of Title 31 of the United States Code.

(4) "Joint Work Statement (JWS)" means a proposal for a CRADA prepared by the Contractor, signed by the Contractor's Laboratory Director or designee which describes the following:

(i) Purpose;

(ii) Scope of Work which delineates the rights and responsibilities of the Government, the Contractor and Third Parties, one of which must be a non-Federal party;

(iii) Schedule for the work; and

(iv) Cost and resource contributions of the parties associated with the work and the schedule.

(5) "Assignment" means any agreement by which the Contractor transfers ownership of Laboratory Intellectual Property, subject to the Government's retained rights.

(6) "Laboratory Biological Materials" means biological materials capable of replication or reproduction, such as plasmids, deoxyribonucleic acid molecules, ribonucleic acid molecules, living organisms of any sort and their progeny, including viruses, prokaryote and eukaryote cell lines, transgenic plants and animals, and any derivatives or modifications thereof or products produced through their use or associated biological products, made under this contract by Laboratory employees or through the use of Laboratory research facilities.

(7) "Laboratory Tangible Research Product" means tangible material results of research which

(i) are provided to permit replication, reproduction, evaluation or confirmation of the research effort, or to evaluate its potential commercial utility;

(ii) are not materials generally commercially available; and

(iii) were made under this contract by Laboratory employees or through the use of Laboratory research facilities.

(8) "Bailment" means any agreement in which the Contractor permits the commercial or non- commercial transfer of custody, access or use of Laboratory Biological Materials or Laboratory Tangible Research Product for a specified purpose of technology transfer or research and development, including without limitation evaluation, and without transferring ownership to the bailee.

(9) "Privately funded technology transfer" means the prosecuting, maintaining, licensing, and marketing of inventions which are not owned by the Government (and not related to CRADA's) when such activities are conducted entirely without the use of Government funds.

(c) Allowable Costs.

(1) The Contractor shall establish and carry out its technology transfer efforts through appropriate organizational elements consistent with the requirements for an Office of Research and Technology Applications (ORTA) pursuant to paragraphs (b) and (c) of Section 11 of the Stevenson-Wydler Technology Innovation Act of 1980, as amended (15 U.S.C. 3710). The costs associated with the conduct of technology transfer through the ORTA including activities associated with obtaining, maintaining, licensing, and assigning Intellectual Property rights, increasing the potential for the transfer of technology, and the widespread notice of technology transfer opportunities, shall be deemed allowable provided that such costs meet the other requirements of the allowable costs provisions of this Contract. In addition to any separately designated funds,

these costs in any fiscal year shall not exceed an amount equal to 0.5 percent of the operating funds included in the Federal research and development budget (including Work For Others) of the Laboratory for that fiscal year without written approval of the Contracting Officer.

(2) The Contractor's participation in litigation to enforce or defend Intellectual Property claims incurred in its technology transfer efforts shall be as provided in the clause entitled "Insurance - Litigation and Claims" of this Contract.

(d) Conflicts of Interest--Technology Transfer. The Contractor shall have implementing procedures that seek to avoid employee and organizational conflicts of interest, or the appearance of conflicts of interest, in the conduct of its technology transfer activities. These procedures shall apply to other persons participating in Laboratory research or related technology transfer activities. Such implementing procedures shall be provided to the Contracting Officer for review and approval within sixty (60) days after execution of this contract. The Contracting Officer shall have thirty (30) days thereafter to approve or require specific changes to such procedures. Such implementing procedures shall include procedures to:

(1) Inform employees of and require conformance with standards of conduct and integrity in connection with the CRADA activity in accordance with the provisions of paragraph (n)(5) of this clause;

(2) Review and approve employee activities so as to avoid conflicts of interest arising from commercial utilization activities relating to Contractor-developed Intellectual Property;

(3) Conduct work performed using royalties so as to avoid interference with or adverse effects on ongoing DOE projects and programs;

(4) Conduct activities relating to commercial utilization of Contractor-developed Intellectual Property so as to avoid interference with or adverse effects on user facility or WFO activities of the Contractor;

(5) Conduct DOE-funded projects and programs so as to avoid the appearance of conflicts of interest or actual conflicts of interest with non-Government funded work;

(6) Notify the Contracting Officer with respect to any new work to be performed or proposed to be performed under the Contract for DOE or other Federal agencies where the new work or proposal involves Intellectual Property in which the Contractor has obtained or intends to request or elect title;

(7) Except as provided elsewhere in this Contract, obtain the approval of the Contracting Officer for any licensing of or assignment of title to Intellectual

Property rights by the Contractor to any business or corporate affiliate of the Contractor;

(8) Obtain the approval of the Contracting Officer prior to any assignment, exclusive licensing, or option for exclusive licensing, of Intellectual Property to any person who has been a Laboratory employee within the previous two years or to the company in which he or she is a principal; and

(9) Notify non-Federal sponsors of WFO activities, or non-Federal users of user facilities, of any relevant Intellectual Property interest of the Contractor prior to execution of WFOs or user agreements.

(10) Notify DOE prior to evaluating a proposal by a third party or DOE, when the subject matter of the proposal involves an elected or waived subject invention under this contract or one in which the Contractor intends to elect to retain title under this contract.

(e) Fairness of Opportunity. In conducting its technology transfer activities, the Contractor shall prepare procedures and take all reasonable measures to ensure widespread notice of availability of technologies suited for transfer and opportunities for exclusive licensing and joint research arrangements. The requirement to widely disseminate the availability of technology transfer opportunities does not apply to a specific application originated outside of the Laboratory and by entities other than the Contractor.

(f) U.S. Industrial Competitiveness.

(1) In the interest of enhancing U.S. Industrial Competitiveness, the Contractor shall, in its licensing and assignments of Intellectual Property, give preference in such a manner as to enhance the accrual of economic and technological benefits to the U.S. domestic economy. The Contractor shall consider the following factors in all of its licensing and assignment decisions involving Laboratory intellectual property where the Laboratory obtains rights during the course of the Contractor's operation of the Laboratory under this contract:

(i) whether any resulting design and development will be performed in the United States and whether resulting products, embodying parts, including components thereof, will be substantially manufactured in the United States; or

(ii) (A) whether the proposed licensee or assignee has a business unit located in the United States and whether significant economic and technical benefits will flow to the United States as a result of the license or assignment agreement; and

(B) in licensing any entity subject to the control of a foreign company or government, whether such foreign government permits United

States agencies, organizations or other persons to enter into cooperative research and development agreements and licensing agreements, and has policies to protect United States Intellectual Property rights.

(2) If the Contractor determines that neither of the conditions in paragraphs (f)(1)(i) or (ii) of this clause are likely to be fulfilled, the Contractor, prior to entering into such an agreement, must obtain the approval of the Contracting Officer. The Contracting Officer shall act on any such requests for approval within thirty (30) days.

(3) The Contractor agrees to be bound by the provisions of 35 U.S.C. 204 (Preference for United States industry).

(g) Indemnity--Product Liability. In entering into written technology transfer agreements, including but not limited to, research and development agreements, licenses, assignments and CRADAs, the Contractor agrees to include in such agreements a requirement that the U.S. Government and the Contractor, except for any negligent acts or omissions of the Contractor, be indemnified for all damages, costs, and expenses, including attorneys' fees, arising from personal injury or property damage occurring as a result of the making, using or selling of a product, process or service by or on behalf of the Participant, its assignees or licensees which was derived from the work performed under the agreement. The Contractor shall identify and obtain the approval of the Contracting Officer for any proposed exceptions to this requirement such as where State or local law expressly prohibit the Participant from providing indemnification or where the research results will be placed in the public domain.

(h) Disposition of Income.

(1) Royalties or other income earned or retained by the Contractor as a result of performance of authorized technology transfer activities herein shall be used by the Contractor for scientific research, development, technology transfer, and education at the Laboratory, consistent with the research and development mission and objectives of the Laboratory and subject to Section 12(b)(5) of the Stevenson-Wydler Technology Innovation Act of 1980, as amended (15 U.S.C. 3710a(b)(5)) and Chapter 38 of the Patent Laws (35 U.S.C. 200 et seq.) as amended through the effective date of this contract award or modification. If the net amounts of such royalites and income received from patent licensing after payment of patent costs, licensing costs, payment to inventors and other expenses incidental to the administration of Subject Inventions during any fiscal year exceeds 5 percent of the Laboratory’s budget for that fiscal year, 75 percent of such excess amounts shall be paid to the Treasury of the United States, and the remaining amount of such excess shall be used by the Contractor for the purposes as described above in this paragraph. Any inventions arising out of such scientific research and development activities shall be deemed to be “Subject Inventions” under the contract.

(2) The Contractor shall include as a part of its annual Laboratory Institutional Plan or other such annual document a plan setting out those uses to which royalties and other income received as a result of performance of authorized technology transfer activities herein will be applied at the Laboratory, and at the end of the year, provide a separate accounting for how the funds were actually used. Under no circumstances shall these royalties and income be used for an illegal augmentation of funds furnished by the U.S. Government.

(3) The Contractor shall establish subject to the approval of the Contracting Officer a policy for making awards or sharing of royalties with Contractor employees, other coinventors and coauthors, including Federal employee coinventors when deemed appropriate by the Contracting Officer.

(i) Transfer to Successor Contractor. In the event of termination or upon the expiration of this Contract, any unexpended balance of income received for use at the Laboratory shall be transferred, at the Contracting Officer's request, to a successor contractor, or in the absence of a successor contractor, to such other entity as designated by the Contracting Officer. The Contractor shall transfer title, as one package, to the extent the Contractor retains title, in all patents and patent applications, licenses, accounts containing royalty revenues from such license agreements, including equity positions in third party entities, and other Intellectual Property rights which arose at the Laboratory, to the successor contractor or to the Government as directed by the Contracting Officer.

(j) Technology Transfer Affecting the National Security.

(1) The Contractor shall notify and obtain the approval of the Contracting Officer, prior to entering into any technology transfer arrangement, when such technology or any part of such technology is classified or sensitive under Section 148 of the Atomic Energy Act (42 U.S.C. 2168). Such notification shall include sufficient information to enable DOE to determine the extent that commercialization of such technology would enhance or diminish security interests of the United States, or diminish communications within DOE's nuclear weapon production complex. DOE shall use its best efforts to complete its determination within sixty (60) days of the Contractor's notification, and provision of any supporting information, and DOE shall promptly notify the Contractor as to whether the technology is transferable.

(2) The Contractor shall include in all of its technology transfer agreements with third parties, including, but not limited to, CRADAs, licensing agreements and assignments, notice to such third parties that the export of goods and/or Technical Data from the United States may require some form of export control license or other authority from the U.S. Government and that failure to obtain such export control license may result in criminal liability under U.S. laws.

(3) For other than fundamental research as defined in National Security Decision Directive 189, the Contractor is responsible to conduct internal export control reviews and assure that technology is transferred in accordance with applicable law.

(k) Records. The Contractor shall maintain records of its technology transfer activities in a manner and to the extent satisfactory to the DOE and specifically including, but not limited to, the licensing agreements, assignments and the records required to implement the requirements of paragraphs (e), (f), and (h) of this clause and shall provide reports to the Contracting Officer to enable DOE to maintain the reporting requirements of Section 12(c)(6) of the Stevenson-Wydler Technology Innovation Act of 1980, as amended (15 U.S.C. 3710a(c)(6)). Such reports shall be made annually in a format to be agreed upon between the Contractor and DOE and in such a format which will serve to adequately inform DOE of the Contractor's technology transfer activities while protecting any data not subject to disclosure under the Rights in Technical Data clause and paragraph (n) of this clause. Such records shall be made available in accordance with the clauses of this Contract pertaining to inspection, audit and examination of records.

(l) Reports to Congress. To facilitate DOE's reporting to Congress, the Contractor is required to submit annually to DOE a technology transfer plan for conducting its technology transfer function for the upcoming year, including plans for securing Intellectual Property rights in Laboratory innovations with commercial promise and plans for managing such innovations so as to benefit the competitiveness of United States industry. This plan shall be provided to the Contracting Officer on or before October 1st of each year.

(m) Oversight and Appraisal. The Contractor is responsible for developing and implementing effective internal controls for all technology transfer activities consistent with the audit and record requirements of this Contract. Laboratory Contractor performance in implementing the technology transfer mission and the effectiveness of the Contractor's procedures will be evaluated by the Contracting Officer as part of the annual appraisal process, with input from the cognizant Secretarial Officer or program office.

(n) Technology Transfer Through Cooperative Research and Development Agreements. Upon approval of the Contracting Officer and as provided in a DOE approved Joint Work Statement (JWS), the Laboratory Director or his designee may enter into CRADAs on behalf of the DOE subject to the requirements set forth in this paragraph.

(1) Review and Approval of CRADAs

(i) Except as otherwise directed in writing by the Contracting Officer, each JWS shall be submitted to the Contracting Officer for approval. The Contractor's Laboratory Director or designee shall provide a program mission impact statement and shall include an impact statement regarding related Intellectual Property rights known by the Contractor to

be owned by the Government to assist the Contracting Officer in his approval determination.

(ii) The Contractor shall also include (specific to the proposed CRADA), a statement of compliance with the Fairness of Opportunity requirements of paragraph (e) of this clause.

(iii) Within ninety (90) days after submission of a JWS, the Contracting Officer shall approve, disapprove or request modification to the JWS. If a modification is required, the Contracting Officer shall approve or disapprove any resubmission of the JWS within thirty (30) days of its resubmission, or ninety (90) days from the date of the original submission, whichever is later. The Contracting Officer shall provide a written explanation to the Contractor's Laboratory Director or designee of any disapproval or requirement for modification of a JWS.

(iv) Upon approval of a JWS, the Contractor's Laboratory Director or designee may submit a CRADA, based upon the approved JWS, to the Contracting Officer. The Contracting Officer, within thirty (30) days of receipt of the CRADA, shall approve or request modification of the CRADA. If the Contracting Officer requests a modification of the CRADA, an explanation of such request shall be provided to the Laboratory Director or designee.

(v) Except as otherwise directed in writing by the Contracting Officer, the Contractor shall not enter into, or begin work under, a CRADA until approval of the CRADA has been granted by the Contracting Officer. The Contractor may submit its proposed CRADA to the Contracting Officer at the time of submitting its proposed JWS or any time thereafter. However, the Contracting Officer is not obligated to respond under paragraph (n)(1)(iv) of this clause until within thirty (30) days after approval of the JWS or thirty (30) days after submittal of the CRADA, whichever is later.

(2) Selection of Participants. The Contractor's Laboratory Director or designee in deciding what CRADA to enter into shall:

(i) Give special consideration to small business firms, and consortia involving small business firms;

(ii) Give preference to business units located in the United States which agree that products or processes embodying Intellectual Property will be substantially manufactured or practiced in the United States and, in the case of any industrial organization or other person subject to the control of a foreign company or government, take into consideration whether or not such foreign government permits United States agencies,

organizations, or other persons to enter into cooperative research and development agreements and licensing agreements;

(iii) Provide Fairness of Opportunity in accordance with the requirements of paragraph (e) of this clause; and

(iv) Give consideration to the Conflicts of Interest requirements of paragraph (d) of this clause.

(3) Withholding of Data

(i) Data that is first produced as a result of research and development activities conducted under a CRADA and that would be a trade secret or commercial or financial data that would be privileged or confidential, if such data had been obtained from a non-Federal third party, may be protected from disclosure under the Freedom of Information Act as provided in the Stevenson- Wydler Technology Innovation Act of 1980, as amended (15 U.S.C. 3710a(c)(7)) for a period as agreed in the CRADA of up to five (5)years from the time the data is first produced. The DOE shall cooperate with the Contractor in protecting such data.

(ii) Unless otherwise expressly approved by the Contracting Officer in advance for a specific CRADA, the Contractor agrees, at the request of the Contracting Officer, to transmit such data to other DOE facilities for use by DOE or its Contractors by or on behalf of the Government. When data protected pursuant to paragraph (n)(3)(i) of this clause is so transferred, the Contractor shall clearly mark the data with a legend setting out the restrictions against private use and further dissemination, along with the expiration date of such restrictions.

(iii) In addition to its authority to license Intellectual Property, the Contractor may enter into licensing agreements with third parties for data developed by the Contractor under a CRADA subject to other provisions of this Contract. However, the Contractor shall neither use the protection against dissemination nor the licensing of data as an alternative to the submittal of invention disclosures which include data protected pursuant to paragraph (n)(3)(i) of this clause.

(4) Work For Others and User Facility Programs

(i) WFO and User Facility Agreements (UFAs) are not CRADAs and will be available for use by the Contractor in addition to CRADAs for achieving utilization of employee expertise and unique facilities for maximizing technology transfer. The Contractor agrees to inform prospective CRADA participants, which are intending to substantially pay full cost recovery for the effort under a proposed CRADA, of the availability of alternative forms

of agreements, i.e., WFO and UFA, and of the Class Patent Waiver provisions associated therewith.

(ii) Where the Contractor believes that the transfer of technology to the U.S. domestic economy will benefit from, or other equity considerations dictate, an arrangement other than the Class Waiver of patent rights to the sponsor in WFO and UFAs, a request may be made to the Contracting Officer for an exception to the Class Waivers.

(iii) Rights to inventions made under agreements other than funding agreements with third parties shall be governed by the appropriate provisions incorporated, with DOE approval, in such agreements, and the provisions in such agreements take precedence over any disposition of rights contained in this Contract. Disposition of rights under any such agreement shall be in accordance with any DOE class waiver (including Work for Others and User Class Waivers) or individually negotiated waiver which applies to the agreement.

(5) Conflicts of Interest

(i) Except as provided in paragraph (n)(5)(iii) of this clause, the Contractor shall assure that no employee of the Contractor shall have a substantial role (including an advisory role) in the preparation, negotiation, or approval of a CRADA, if, to such employee's knowledge:

(A) Such employee, or the spouse, child, parent, sibling, or partner of such employee, or an organization (other than the Contractor) in which such employee serves as an officer, director, trustee, partner, or employee--

(1) holds financial interest in any entity, other than the Contractor, that has a substantial interest in the preparation, negotiation, or approval of the CRADA;

(2) receives a gift or gratuity from any entity, other than the Contractor, that has a substantial interest in the preparation, negotiation, or approval of the CRADA; or

(B) A financial interest in any entity, other than the Contractor, that has a substantial interest in the preparation, negotiation, or approval of the CRADA, is held by any person or organization with whom such employee is negotiating or has any arrangement concerning prospective employment.

(ii) The Contractor shall require that each employee of the Contractor who has a substantial role (including an advisory role) in the preparation,

negotiation, or approval of a CRADA certify through the Contractor to the Contracting Officer that the circumstances described in paragraph (n)(5)(i) of this clause do not apply to that employee.

(iii) The requirements of paragraphs (n)(5)(i) and (n)(5)(ii) of this clause shall not apply in a case where the Contracting Officer is advised by the Contractor in advance of the participation of an employee described in those paragraphs in the preparation, negotiation or approval of a CRADA of the nature of and extent of any financial interest described in paragraph (n)(5)(i) of this clause, and the Contracting Officer determines that such financial interest is not so substantial as to be considered likely to affect the integrity of the Contractor employee's participation in the process of preparing, negotiating, or approving the CRADA.

(o) Technology Transfer in Other Cost-Sharing Agreements. In conducting research and development activities in cost-shared agreements not covered by paragraph (n) of this clause, the Contractor, with prior written permission of the Contracting Officer, may provide for the withholding of data produced thereunder in accordance with the applicable provisions of paragraph (n)(3) of this clause.

(p) Nothing in paragraphs (c) Allowable Costs, (e) Fairness of Opportunity, (f) U.S. Industrial Competitiveness, (g) Indemnity - Product Liability, (h) Disposition of Income, and (i) Transfer to Successor Contractor of this clause are intended to apply to the contractor's privately funded technology transfer activities if such privately funded activities are addressed elsewhere in the contract.

CLAUSE I.97 - DEAR 970.5204-42 KEY PERSONNEL (APR 1984) (DEVIATION)

It having been determined that the employees whose names appear in Part III, Section J, Appendix F or persons approved by the Contracting Officer as persons of substantially equal abilities and qualifications, are necessary for the successful performance of this contract, the Contractor agrees to assign such employees or persons to the performance of the work under this contract and shall not reassign or remove any of them, except for lawful disciplinary reasons, without the consent of the Contracting Officer. Whenever, for any reason, one or more of the aforementioned employees is unavailable for assignment for work under the contract, the Contractor shall, with the approval of the Contracting Officer, replace such employee with an employee of substantially equal abilities and qualifications. SURA futher agrees to prior consultation with the Manager of the Jefferson Lab Site Office regarding proposed changes associated with any position at the Associate Director level and the Head of any project designated by DOE as a “Major Systems Acquisition (MSA).”

CLAUSE I.98 - DEAR 970.5204-43 OTHER GOVERNMENT CONTRACTORS (APR 1994)

The Government may undertake or award other contracts for additional work or services. The Contractor agrees to fully cooperate with such other Contractors and Government employees and carefully fit its own work to such other work as may be directed by the Contracting Officer. The Contractor shall not commit or permit any act which will interfere with the performance of work by any other Contractor or by Government employees.

CLAUSE I.99 - DEAR 970.5204-44 FLOWDOWN OF CONTRACT REQUIREMENTS TO SUBCONTRACTS (FEB 1997)

(a) The Contractor shall include the clauses in paragraph (b) of this clause in appropriate subcontracts.

(1) To the extent that the clause is included in this prime contract, the Contractor shall comply with that portion of the clause that directs application to subcontracts.

(2) To the extent that the clause is not included in this prime contract, or where it is included but there is no instruction for treatment in subcontracts, the Contractor shall include the clause in accordance with applicable regulatory guidance which would apply if the subcontract were a prime contract with the Federal government.

(3) In all cases, where a regulation is cited, the Contractor shall comply with the regulation in administration of the related clause.

(b) Clauses and related regulations.

(1) Air transportation by U.S. Flag carriers. Clause at FAR 52.247-63.

(2) Anti-kickback Act of 1986. Clause at FAR52.203--7.

(3) Clean Air and Water. Clause at FAR 52.223-2, and follow the requirements of FAR 23.1.

(4) Contract Work Hours and Safety Standards Act. Clause at FAR 52.222-4, and follow the requirements of FAR 22.3.

(5) Cost or Pricing Data. Clauses prescribed at 48 CFR (DEAR) 970.1508-1, and appropriate contract provisions similar to those set forth at 48 CFR 52.215-10 and 48 CFR 52.215-11, that provide for the reduction of a negotiated subcontract price by any significant amount that the subcontract price was increased because of the submission of defective cost or pricing data by a subcontractor at any tier.

(6) Cost and Schedule Control Systems. Clause at 48 CFR (DEAR) 970.5204-50.

(7) Cost Accounting Standards. Clause at FAR 52.230-2, as prescribed in 48 CFR (DEAR) 970.30.

(8) Davis-Bacon Act. Clauses as directed at FAR 22.407, and following the requirements of FAR 22.4 to the same extent that they would apply if the subcontract had been directly awarded by DOE. 48 CFR (DEAR) Subpart 922.4 and 48 CFR (DEAR) 970.2273 provide guidance to assist in determining the applicability of these regulations.

(9) Employment of the handicapped. Clause at FAR 52.222-36, and follow the requirements of FAR 22.14.

(10) Environmental and Occupational Safety and Health. Clauses as prescribed in 48 CFR (DEAR) 970.2303-2.

(11) Equal Employment Opportunity. Clauses as prescribed in FAR 22.810, as applicable, and follow the requirements of FAR 22.8, 48 CFR (DEAR) 922.8, E.O. 11246 and 40 CFR Part 60.

(12) Reserved.

(13) Foreign travel. Clause at 48 CFR (DEAR) 970.5204-52.

(14) Nuclear Hazards Indemnity. Clause at 48 CFR (DEAR) 970.2870.

(15) Organizational Conflicts of Interest. Clause at 48 CFR (DEAR) 952.209-72, in accordance with 48 CFR (DEAR) 970.0905.

(16) Patent, Data and Copyrights. Appropriate clauses as required by 48 CFR (DEAR) Parts 927 and 970.

(17) Printing. Clause at 48 CFR (DEAR) 970.5204-19.

(18) Privacy Act. Clauses at FAR 52.224-1 and FAR 52.224-2, and follow the requirements of FAR 24.1.

(19) Accounts, Records and Inspection. Clause at 48 CFR (DEAR) 970.5204-9.

(20) Safeguarding Classified Information. Appropriate clauses as prescribed at 48 CFR (DEAR) 970.0404.

(21) Service Contract Act. Clauses at FAR 52.222-40 and FAR 52.222-41.

(22) Small Business and Small Disadvantaged Business Concerns. Clause at FAR 52.219-9.

(23) Special Disabled and Vietnam Era Veterans. Clause at FAR 52.222-35, and follow the requirements of FAR Subpart 22.13.

(24) Taxes. Clause similar to 48 CFR (DEAR) 970.5204-23, Cost-reimbursement. An appropriate tax clause covering tax matters should also be included in fixed-price subcontracts.

(25) Termination. Appropriate clause or clauses as set forth at FAR 52.249-1 through 52.249-14.

(c) Other. Omission from the foregoing list of contract flowdown provisions shall not be construed as waiving a requirement for the Contractor to comply with a flowdown requirements for subcontracts appearing elsewhere in this contract.

CLAUSE I.100 - DEAR 970.5204-45 TERMINATION (OCT 1995)

(a) This contract shall continue until September 30, 2004 unless sooner terminated in accordance with the provisions which follow:

(1) The performance of work under this contract may be terminated by the Government in whole, or from time to time in part, (i) whenever the Contractor shall default in performance, and shall fail to cure the fault or failure within such period as the Contracting Officer may allow after receipt from the Contracting Officer of a notice specifying the fault or failure, or (ii) whenever, for any reason, the Contracting Officer shall determine any such termination is for the best interest of the Government. Termination of the work hereunder shall be effected by delivery of a notice of termination specifying whether termination is for default of the Contractor or for the convenience of the Government, the extent to which performance of work under the contract shall be terminated, and the date upon which such termination shall become effective. Any such termination shall be without prejudice to any claim which either party may have against the other. If, after notice of termination under the provisions of (a)(1)(i) of this section, it is determined for any reason that the Contractor was not in default, such notice of default shall be deemed to have been issued pursuant to (a)(1)(ii) of this section, and the rights and obligations of the Parties hereto shall in such event be governed accordingly.

(2) Upon receipt of notice of termination, in accordance with (1) above, the Contractor shall, to the extent directed in writing by the Contracting Officer, discontinue the terminated work and the placing of orders for materials, facilities, supplies, and services in connection therewith, and shall proceed, if, and to the extent required by the Contracting Officer, to cancel promptly and settle with the approval of the Contracting Officer, existing orders, subcontracts, and commitments insofar as such orders, subcontracts, and commitments pertain to this contract.

(b) Upon the termination of this contract, full and complete settlement of all claims of the Contractor and of DOE arising out of this contract shall be made as follows:

(1) The Government shall have the right in its discretion to assume sole responsibility for any or all obligations, commitments, and claims that the Contractor may have undertaken or incurred, the cost of which are allowable in accordance with the provisions of this contract; and the Contractor shall, as a condition of receiving the payments mentioned in this Article, execute and deliver all such papers and; take all such steps as the Contracting Officer may require for the purpose of fully vesting in the Government any rights and benefits the Contractor may have under or in connection with such obligations, commitments, or claims.

(2) The Government shall treat as allowable costs all expenditures made in accordance with and allowable under the clause entitled “Allowable Costs and Fixed-Fee (Management and Operating Contract),” not previously so allowed or otherwise credited for work performed prior to the effective date of termination, together with expenditures as may be incurred for a reasonable time thereafter with the approval of, or as directed by, the Contracting Officer.

(3) The Government shall treat as allowable costs, to the extent not included in paragraph (b)(2) of this section, the costs of settling and paying claims arising out of the termination of work under orders, subcontracts, and commitments as provided in paragraph (a)(2) of this section.

(4) The Government shall treat as allowable costs the reasonable costs of settlement, including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the termination of the contract and for the termination and settlement of orders and subcontracts thereunder, together with such further expenditures made by the Contractor after the date of termination for the protection or disposition of Government property as are approved or required by the Contracting Officer; provided, however, that if the termination is for default of the Contractor, there shall not be included any amount for preparation of the Contractor's settlement proposal.

(5) If performance of work under this contract is terminated in whole by the Government, the fixed-fee of the Contractor shall be prorated to and including the effective date of such termination. In addition, if the termination is for the convenience of the Government, the Contractor shall be paid a fixed fee in an amount to be agreed upon as compensation for its services in closing out the work under this contract after the effective date of such termination. The additional fixed fee is to be negotiated as soon as practicable after service of notice of termination, shall take into account the estimate of the cost of the

services and managerial effort to be rendered under this clause after the effective date of termination, and shall be provided for in a supplement or amendment to this contract prior to final settlement hereunder. Pending agreement as to the amount of such fee, the Contractor shall diligently proceed with the performance of the services required under this clause. No additional fee will be paid if the contract is terminated due to the default of the Contractor. In the event of a partial termination by the Government, an equitable adjustment shall be made in the fixed-fee if such termination results in a material decrease in the level of the Contractor's management effort. Any failure to agree on the right to or the amount of any adjustment shall be deemed a dispute within the purview of the clause hereof entitled “Disputes”.

(6) The obligation of the Government to make any of the payments required by this Clause or any other provisions of this contract shall be subject to any unsettled claims in connection with this contract which the Government may have against the Contractor.

(c) Prior to final settlement, the Contractor shall furnish a release as required in the clause entitled “Payments and Advances” and account for Government-owned property as may be required by the Contracting Officer; provided, however, that unless the Contracting Officer requires an inventory, the maintenance and disposition of the records of Government-owned property in accordance with the clause entitled “Accounts, Records and Inspection” shall be accepted by the Contracting Officer as full compliance with all requirements of this contract pertaining to an accounting for such property.

CLAUSE I.101 - DEAR 970.5204-52 FOREIGN TRAVEL (FEB 1997) (DEVIATION)

(a) Foreign travel, when charged directly, shall be subject to the conditions outlined in the “Delegation of Authority for Approving Foreign Travel” letter dated January 25, 1993 (Part III, Attachment J.4, Appendix D.2) regardless of whether funds for such travel are contained in an approved budget. Foreign travel is defined as any travel outside of Canada, Mexico and the United States and its territories and possessions.

(b) Request for approval shall be submitted at least 45 days prior to the planned departure date, be on a Request for Approval of Foreign Travel form, and when applicable, include a notification of proposed soviet-bloc travel.

CLAUSE I.102 – RESERVED

CLAUSE I.103 - DEAR 970.5204-58 WORKPLACE SUBSTANCE ABUSE PROGRAMS AT DOE SITES (AUG 1992)

(a) Program Implementation. The Contractor shall, consistent with 10 CFR Part 707, Workplace Substance Abuse Programs at DOE Sites, incorporated herein by reference with full force and effect, develop, implement, and maintain a workplace substance abuse program.

(b) Remedies. In addition to any other remedies available to the Government, the Contractor's failure to comply with the requirements of 10 CFR Part 707 or to perform in a manner consistent with its approved program may render the Contractor subject to: the suspension of contract payments, or, where applicable, a reduction in award fee; termination for default; and suspension or debarment.

(c) Subcontracts.

(1) The Contractor agrees to notify the Contracting Officer reasonably in advance of, but not later than thirty (30) days prior to, the award of any subcontract the Contractor believes may be subject to the requirements of 10 CFR Part 707.

(2) The DOE prime Contractor shall require all subcontracts subject to the provisions of 10 CFR Part 707 to agree to develop and implement a workplace substance abuse program that complies with the requirements of 10 CFR Part 707, Workplace Substance Abuse Programs at DOE Sites, as a condition for award of the subcontract. The DOE prime Contractor shall review and approve each subcontractor's program, and shall periodically monitor each subcontractor's implementation of the program for effectiveness and compliance with 10 CFR Part 707.

(3) The Contractor agrees to include, and require the inclusion of, the requirements of this Clause in all subcontracts, at any tier, that are subject to the provisions of 10 CFR Part 707.

CLAUSE I.104 - DEAR 970.5204-59 WHISTLEBLOWER PROTECTION FOR CONTRACTOR EMPLOYEES (APR 1999)

(a) The Contractor shall comply with the requirements of the "DOE Contractor Employee Protection Program" at 10 CFR Part 708 for work performed on behalf of DOE directly related to activities at DOE-owned or –leased sites.

(b) The Contractor shall insert or have inserted the substance of this clause, including this paragraph (b), in subcontracts at all tiers, for subcontracts involving work performed on behalf of DOE directly related to activities at DOE-owned or –leased sites.

CLAUSE I.105 - DEAR 970.5204-60 FACILITIES MANAGEMENT (NOV 1997)

(a) Site development planning. The Government shall provide to the contractor site development guidance for the facilities and lands for which the contractor is responsible under the terms and conditions of this contract. Based upon this guidance, the contractor shall prepare, and maintain through annual updates, a Long-Range Site Development Plan (Plan) to reflect those actions necessary to keep the development of these facilities current with the needs of the Government and allow the contractor to successfully accomplish the work required under this contract. In developing this Plan, the contractor shall follow the procedural guidance set forth in the applicable DOE Directives in the Life Cycle Facility Operations Series listed elsewhere in this contract. The contractor shall use the Plan to manage and control the development of facilities and lands. All plans and revisions shall be approved by the Government.

(b) General design criteria. The general design criteria which shall be utilized by the contractor in managing the site for which it is responsible under this contract are those specified in the applicable DOE Directives in the 6430, Design Criteria, series listed elsewhere in this contract. The contractor shall comply with these mandatory, minimally acceptable requirements for all facility designs with regard to any building acquisition, new facility, facility addition or alteration or facility lease undertaken as part of the site development activities of paragraph (a) above. This includes on-site constructed buildings, pre-engineered buildings, plan-fabricated modular buildings, and temporary facilities. For existing facilities, original design criteria apply to the structure in general; however, additions or modifications shall comply with this directive and the associated latest editions of the references therein. An exception may be granted for off-site office space being leased by the contractor on a temporary basis.

(c) Energy management. The contractor shall manage the facilities for which it is responsible under the terms and conditions of this contract in an energy efficient manner in accordance with the applicable DOE Directives in the Life Cycle Facility Operations Series listed elsewhere in this contract. The contractor shall develop a 10-year energy management plan for each site with annual reviews and revisions. The contractor shall submit an annual report on progress toward achieving the goals of the 10-year plan for each individual site, and an energy conservation analysis report for each new building or building addition project. Any acquisition of utility services by the contractor shall be conducted in accordance with 48 CFR 970.41.

(d) Subcontract requirements. To the extent the contractor subcontracts performance of any of the responsibilities discussed in this clause, the subcontract shall contain the requirements of this clause relative to the subcontracted responsibilities.

CLAUSE I.106 - DEAR 970.5204-61 COST PROHIBITIONS RELATED TO LEGAL AND OTHER PROCEEDINGS (JUN 1997)

(a) Definitions.

Conviction, as used in this section, means a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, including a conviction due to a plea of nolo contendere.

Costs include, but are not limited to, administrative and clerical expenses; the cost of legal services, whether performed by in-house or private counsel; the costs of the services of accountants, consultants, or others retained by the Contractor to assist it; all elements of compensation, related costs, and expenses of employees, officers and directors; and any similar costs incurred before, during, and after commencement of a proceeding which bears a direct relationship to the proceeding.

Fraud, as used herein, means --

(i) Acts of fraud or corruption or attempts to defraud the Government or to corrupt its agents,

(iv) Acts which constitute a cause for debarment or suspension under FAR 9.406-(2)(a) and FAR 9.407-(2)(a), and,

(iii) Acts which violate the False Claims Act, 31 U.S.C. 3729-3731, or the Anti-kickback Act, 41 U.S.C. 51 and 54.

Penalty does not include restitution, reimbursement, or compensatory damages.

Proceeding includes an investigation.

(b) Except as otherwise described in this section, costs incurred in connection with any proceeding brought by a third party in the name of the United States under the False Claims Act, 31 U.S.C. 3730, or costs incurred in connection with any criminal, civil or administrative proceeding by the Federal Government, or a State, local or foreign government, are not allowable if the proceeding relates to a violation of, or failure to comply with a Federal, State, local or foreign statute or regulation by the Contractor, and results in any of the following dispositions:

(1) In a criminal proceeding, conviction.

(2) In a civil or administrative proceeding involving an allegation of fraud or similar misconduct, a determination of Contractor liability.

(3) In the case of any civil or administrative proceeding, the imposition of a monetary penalty.

(4) A final decision by an appropriate Federal official to debar or suspend the Contractor, to rescind or void a contract, or to terminate a contract for default by reason of a violation of or failure to comply with a law or regulation.

(5) A disposition by consent or compromise, if the action could have resulted in any of the dispositions described in paragraphs (b)(1), (2), (3) or (4) of this section.

(6) Not covered by paragraphs (b)(1) through (5) of this section, but where the underlying alleged Contractor misconduct was the same as that which led to a different proceeding whose costs are unallowable by reason of paragraphs (b)(1) through (5) of this section.

(c) (1) If a proceeding referred to in paragraph (b) of this section is commenced by the Federal Government and is resolved by consent or compromise pursuant to an agreement entered into by the Contractor and the Federal Government, then the costs incurred by the Contractor in connection with such proceeding that are otherwise unallowable under paragraph (b) of this section may be allowed to the extent specifically provided in such agreement.

(2) In the event of a settlement of any proceeding brought by a third party under the False Claims Act in which the United States did not intervene, reasonable costs incurred by the Contractor in connection with such a proceeding that are not otherwise unallowable by regulation or by separate agreement with the United States, may be allowed if the Contracting Officer, in consultation with his or her legal advisor, determines that there was very little likelihood that the third party would have been successful on the merits.

(d) If a proceeding referred to in paragraph (b) of this section is commenced by a State, local or foreign government, the Contracting Officer may allow the costs incurred in such proceeding, provided the Procurement Executive determines that the costs were incurred as a result of compliance with a specific term or condition of the contract, or specific written direction of the Contracting Officer.

(e) Costs incurred in connection with a proceeding described in paragraph (b) of this section, but which are not made unallowable by that paragraph, may be allowed by the Contracting Officer only to the extent that:

(1) The total costs incurred are reasonable in relation to the activities required to deal with the proceeding and the underlying cause of action;

(2) Payment of the costs incurred, as allowable and allocable contract costs, is not prohibited by any other provision(s) of this contract;

(3) The costs are not otherwise recovered from the Federal Government or a third party, either directly as a result of the proceeding or otherwise; and

(4) The amount of costs allowed does not exceed 80 percent of the total costs incurred and otherwise allowable under the contract. Such amount that may be allowed (up to the 80 percent limit) shall not exceed the percentage determined by the Contracting Officer to be appropriate, considering the complexity of

procurement litigation, generally accepted principles governing the award of legal fees in civil actions involving the United States as a party, and such other factors as may be appropriate. The amount of reimbursement allowed for legal costs in connection with any proceeding described in subparagraph (c)(2) shall be the amount determined to be reasonable by the Contracting Officer but shall not exceed 80 percent of otherwise allowable costs incurred. Agreements reached under paragraph (c) of this subsection shall be subject to this limitation. If, however, an agreement explicitly states the amount of otherwise allowable incurred legal fees and limits the allowable recovery to 80 percent or less of the stated legal fees, no additional limitation need be applied.

(f) Contractor costs incurred in connection with the defense of suits brought by employees or ex-employees of the Contractor under Section 2 of the Major Fraud Act of 1988, including the cost of all relief necessary to make such employee whole, where the Contractor was found liable or settled, are unallowable.

(g) Costs which may be unallowable under this clause, including directly associated costs, shall be differentiated and accounted for by the Contractor so as to be separately identifiable. During the pendency of any proceeding covered by paragraphs (b) and (f) of this section, the Contracting Officer shall generally withhold payment and not authorize the use of funds advanced under the contract for the payment of such costs. However, the Contracting Officer may, in appropriate circumstances, provide for conditional payment upon provision of adequate security, or other adequate assurance, and agreements by the Contractor to repay all unallowable costs, plus interest, if the costs are subsequently determined to be unallowable.

CLAUSE I.107 - DEAR 970.5204-63 COLLECTIVE BARGAINING AGREEMENTS - MANAGEMENT AND OPERATING CONTRACTS (AUG 1993)

When negotiating collective bargaining agreements applicable to the work force under this contract, the Contractor shall use its best efforts to ensure such agreements contain provisions designed to assure continuity of services. All such agreements entered into during the contract period of performance should provide that grievances and disputes involving the interpretation or application of the agreement will be settled without resorting to strike, lockout, or other interruption of normal operations. For this purpose, each collective bargaining agreement should provide an effective grievance procedure with arbitration as its final step, unless the Parties mutually agree upon some other method of assuring continuity of operations. As part of such agreements, management and labor should agree to cooperate fully with the Federal Mediation and Conciliation Service. The Contractor shall include the substance of this clause in any subcontracts for protective services or other services performed on the DOE-owned site which will affect the continuity of operation of the facility.

CLAUSE I.107A - DEAR 970.5204-71 PATENT RIGHTS – NONPROFIT M&O CONTRACTORS (FEB 1995) (Modification)

(a) Definitions.

(1) "Invention" means any invention or discovery which is or may be patentable or otherwise protectable under title 35 of the United States Code, or any novel variety of plant which is or may be protected under the Plant Variety Protection Act (7 U.S.C. 2321, et seq.).

(2) "Made" when used in relation to any invention means the conception of first actual reduction to practice of such invention.

(3) "Nonprofit organization" means a university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of l954 (26 U.S.C. 501(c)) and exempt from taxation under section 501(a) of the Internal Revenue Code (26 U.S.C. 501(a)) or any nonprofit scientific or educational organization qualified under a state nonprofit organization statute.

(4) "Practical application" means to manufacture, in the case of a composition or product; to practice, in the case of a process or method; or to operate, in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that is benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.

(5) "Small business firm" means a small business concern as defined at section 2 of Pub. L. 85-536 (15 U.S.C. 632) and implementing regulations of the Administrator of the Small Business Administration. For the purpose of this clause, the size standards for small business concerns involved in Government procurement and subcontracting at 13 CFR 121.3-8 and 13 CFR 121.3-12, respectively, will be used.

(6) "Subject invention" means any invention of the contractor conceived or first actually reduced to practice in the performance of work under this contract, provided that in the case of a variety of plant, the date of determination (as defined in section 41(d) of the Plant Variety Protection Act, 7 U.S.C. 2401(d)) must also occur during the period of contract performance.

(7) "Agency licensing regulations" and "agency regulations concerning the licensing of Government-owned inventions" mean the Department of Energy patent licensing regulations at 10 CFR Part 781.

(8) “Exceptional Circumstances Subject Invention” means any subject invention in a technical field or task determined by DOE to be subject to an exceptional circumstances under 35 U.S.C. 202 (a)(ii).

(b) Allocation of principal rights.

(1) The Contractor may retain the entire right, title, and interest throughout the world to each subject invention except an exceptional circumstance subject invention subject to the provisions of this clause and 35 U.S.C. 203. With respect to any subject invention in which the Contractor retains title, the Federal Government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the subject invention throughout the world. The right of the Contractor to elect title to subject inventions is further subject to the invention rights disposition in Treaties or International Agreements and existing or future class waivers to third parties by DOE, such as Work-For-Others, User Facility, and Cooperative Research and Development Agreements (CRADA) waivers.

(2) The DOE reserves the right to unilaterally identify specific treaties or international agreements entered into or to be entered into by the Government after the effective date of this contract and effectuate those license or other rights which are necessary for the Government to meet its obligations to foreign governments, their nationals, and international organizations under such treaties or international agreements with respect to subject inventions made after the date of such unilateral identification.

(3) The Contractor agrees to assign to the Government, the entire right, title and interest thereto, throughout the world in and to any Exceptional Circumstance Subject Invention except to the extent that rights are retained by the Contractor or an employee-inventor may submit a request for greater rights at the time the invention is disclosed to DOE or within 8 months after conception or first actual reduction to practice, whichever occurs first. At this time, the technical fields determined by DOE to be exceptional circumstances are uranium enrichment technology, the storage and disposal of civilian high-level nuclear waste and spent fuel technology, and those national security technologies which are classified, or sensitive under Section 148 of the Atomic Energy Act (42 U.S.C. 2168), DOE has also made a determination of Exceptional Circumstances for DOE Funding Agreements Relating to the U.S. Department of Energy Steel Initiative and Metals Initiative, the Advanced Battery Consortium Program, and any funding agreements, or subcontracts thereunder, which are funded in part by the Electric Power Research Institute (EPRI) or the Gas Research Institute (GRI). DOE reserves the right to unilaterally amend this contract to identify any new technical fields which may be determined to be exceptional circumstances pursuant to 35 U.S.C. 202 (a)(ii) with respect to subject inventions made after the date of the amendment.

(c) Invention disclosure, election of title, and filing of patent application by Contractor.

(1) The Contractor will disclose each subject invention to the Department of Energy (DOE) within 2 months after the inventor discloses it in writing to Contractor

personnel responsible for patent matters. The disclosure to DOE shall be in the form of a written report and shall identify the contract under which the invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding to the extent known at the time of the disclosure, of the nature, purpose, operation, and the physical, chemical, biological or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to the DOE, the Contractor will promptly notify that agency of the acceptance of any manuscript describing the invention for publication or of any on sale or public use planned by the Contractor.

(2) The Contractor will elect in writing whether or not to retain title to any such invention by notifying DOE within 2 years of disclosure to DOE. However, in any case where publication, on sale or public use has initiated the l-year statutory period wherein valid patent protection can still be obtained in the United States, the period for election of title may be shortened by DOE to a date that is no more than 60 days prior to the end of the statutory period.

(3) The Contractor will file its initial patent application on a subject invention to which it elects to retain title within 1 year after election of title or, if earlier, prior to the end of any statutory period wherein valid patent protection can be obtained in the United States after a publication, on sale, or public use. The Contractor will file patent applications in additional countries or international patent offices within either 10 months of the corresponding initial patent application or 6 months from the date permission is granted by the Commissioner of Patents and Trademarks to file foreign patent applications where such filing has been prohibited by a Secrecy Order.

(4) Requests for extension of the time for disclosure, election, and filing under subparagraphs (c)(l), (2), and (3) of this clause may, at the discretion of the agency, be granted.

(d) Conditions when the Government may obtain title. The Contractor will convey to the Federal agency, upon written request, title to any subject invention—

(1) If the Contractor fails to disclose or elect title to the subject invention within the times specified in paragraph (c) of this clause, or elects not to retain title; provided, that DOE may only request title within 60 days after learning of the failure of the Contractor to disclose or elect within the specified times.

(2) In those countries in which the Contractor fails to file patent applications within the times specified in paragraph (c) of this clause; provided, however, that if the Contractor has filed a patent application in a country after the times specified in

paragraph (c) of this clause, but prior to its receipt of the written request of the Federal agency, the Contractor shall continue to retain title in that country.

(3) In any country in which the Contractor decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in reexamination or opposition proceeding on, a patent on a subject invention.

(e) (1) The contractor may request the right to reserve a revocable, nonexclusive, royalty-free license throughout the world in each subject invention to which the Government obtains title, except if the contractor fails to disclose the invention within the times specified in paragraph (c) of this clause. When DOE approves such reservation, the contractor's license will extend to its domestic subsidiaries and affiliates, if any, within the corporate structure of which the contractor is a party and includes the right to grant sublicenses of the same scope to the extent the contractor was legally obligated to do so at the time the contract was awarded. The license is transferable only with the approval of DOE, except when transferred to the successor of that part of the contractor's business to which the invention pertains.

(f) Contractor action to protect the Government's interest.

(1) The Contractor agrees to execute or to have executed and promptly deliver to DOE all instruments necessary to (i) establish or confirm the rights the Government has throughout the world in those subject inventions to which the Contractor elects to retain title, and (ii) convey title to DOE when requested under paragraph (d) of this clause and to enable the government to obtain patent protection throughout the world in that subject invention.

(2) The Contractor agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the Contractor each subject invention made under contract in order that the Contractor can comply with the disclosure provisions of paragraph (c) of this clause, and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions. This disclosure format should require, as a minimum, the information required by subparagraph (c)(1) of this clause. The Contractor shall instruct such employees, through employee agreements or other suitable educational programs, on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.

(3) The Contractor will notify DOE of any decision not to continue the prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceeding on a patent, in any country, not less than 30 days before the expiration of the response period required by the relevant patent office.

(4) The Contractor agrees to include, within the specification of any United States patent application and any patent issuing thereon covering a subject invention, the following statement, "This invention was made with Government support under (identify the contract) awarded by the United States Department of Energy. The Government has certain rights in the invention."

(g) Subcontracts.

(1) The Contractor will include this clause, suitably modified to identify the parties, in all subcontracts, regardless of tier, for experimental, developmental, or research work to be performed by a small business firm or domestic nonprofit organization. The subcontractor will retain all rights provided for the Contractor in this clause, and the Contractor will not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractor's subject inventions.

(2) The contractor shall include in all other subcontracts, regardless of tier, for experimental, developmental, demonstration, or research work the patent rights clause at 952.227-13.

(3) In the case of subcontracts, at any tier, DOE, subcontractor, and the Contractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor and DOE with respect to the matters covered by the clause; provided, however, that nothing in this paragraph is intended to confer any jurisdiction under the Contract Disputes Act in connection with proceedings under paragraph (j) of this clause.

(h) Reporting on utilization of subject inventions. The Contractor agrees to submit, on request, periodic reports no more frequently than annually on the utilization of a subject invention or on efforts at obtaining such utilization that are being made by the Contractor or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received, by the Contractor, and such other data and information as DOE may reasonably specify. The Contractor also agrees to provide additional reports as may be requested by DOE in connection with any march-in proceeding undertaken by that agency in accordance with paragraph (j) of this clause. As required by 35 U.S.C. 202(c)(5), DOE agrees it will not disclose such information to persons outside the Government without permission of the Contractor.

(i) Preference for United States industry. Notwithstanding any other provision of this clause, the Contractor agrees that neither it nor any assignee will grant to any person the exclusive right to use or sell any subject invention in the United States unless such person agrees that any product embodying the subject invention or produced through the use of the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement for such an agreement may be waived by DOE upon a showing by the Contractor or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that

would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

(j) March-in rights. The Contractor agrees that, with respect to any subject invention in which it has acquired title, DOE has the right in accordance with the procedures in 37 CFR 401.6 and any supplemental regulations of the agency to require the Contractor, an assignee or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and, if the Contractor, assignee, or exclusive licensee refuses such a request, DOE has the right to grant such a license itself if DOE determines that--

(1) Such action is necessary because the Contractor or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use;

(2) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the Contractor, assignee, or their licensees;

(3) Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the Contractor, assignee, or licensees; or

(4) Such action is necessary because the agreement required by paragraph (i) of this clause has not been obtained or waived or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of such agreement.

(k) Special provisions for contracts with nonprofit organizations. If the Contractor is a nonprofit organization, it agrees that—

(1) Rights to a subject invention in the United States may not be assigned withoutthe approval of the Federal agency, except where such assignment is made to an organization which has as one of its primary functions the management of inventions; provided, that such assignee will be subject to the same provisions as the Contractor;

(2) The Contractor will share royalties collected on a subject invention with the inventor, including Federal employee co-inventors (when DOE deems it appropriate) when the subject invention is assigned in accordance with 35 U.S.C. 202(e) and 37 CFR 401.10;

(3) The balance of any royalties or income earned by the Contractor with respect to subject inventions, after payment of expenses (including payments to inventors) incidental to the administration of subject inventions will be utilized for the support of scientific research or education; and

(4) It will make efforts that are reasonable under the circumstances to attract licensees of subject inventions that are small business firms, and that it will give a preference to a small business firm when licensing a subject invention if the Contractor determines that the small business firm has a plan or proposal for marketing the invention which, if executed, is equally as likely to bring the invention to practical application as any plans or proposals from applicants that are not small business firms; provided, that the Contractor is also satisfied that the small business firm has the capability and resources to carry out its plan or proposal. The decision whether to give a preference in any specific case will be at the discretion of the contractor. However, the Contractor agrees that the Secretary of Commerce may review the Contractor's licensing program and decisions regarding small business applicants, and the Contractor will negotiate changes to its licensing policies, procedures, or practices with the Secretary of Commerce when that Secretary's review discloses that the Contractor could take reasonable steps to more effectively implement the requirements of this subparagraph (k)(4).

(l) Communications.

(1) The contractor shall direct any notification, disclosure, or request to DOE provided for in this clause to the DOE patent counsel assisting the DOE contracting activity, with a copy of the communication to the Contracting Officer.

(2) Each exercise of discretion or decision provided for in this clause, except subparagraph (k)(4), is reserved for the DOE Patent Counsel and is not a claim or dispute and is not subject to the Contract Disputes Act of 1978. (3) Upon request of the DOE Patent Counsel or the contracting officer, the contractor shall provide any or all of the following:

(i) a copy of the patent application, filing date, serial number and title, patent number, and issue date for any subject invention in any country in which the contractor has applied for a patent;

(ii) a report, not more often than annually, summarizing all subject inventions which were disclosed to DOE individually during the reporting period specified; or

(v) a report, prior to closeout of the contract, listing all subject inventions or stating that there were none.

(m) Transfer to successor contractor.

(1) In the event of termination or expiration of this contract, the contractor shall transfer any unexpended balance of income received relating to intellectual property, in accordance with instructions from the contracting

officer, to a successor contractor, or in the absence of a successor contractor, to such other entity as designated by the contracting officer. The contractor shall also transfer title, as one package, in all patents and patent applications, license agreements, accounts containing royalty revenues from such license agreements, including equity positions in third-party entities, and other intellectual property that arose under the performance of this contract, to the successor contractor or to the Government, as directed by the contracting officer.

(2) The Government agrees that the recipient of such title shall assume any remaining obligations and liabilities in connection with the patents and patent applications.

(n) Facilities license.

In addition to the rights of the parties with respect to inventions or discoveries conceived or first actually reduced to practice in the course of or under this contract, the contractor agrees to and does hereby grant to the Government an irrevocable, nonexclusive, paid- up license in and to any inventions or discoveries regardless of when conceived or actually reduced to practice or acquired by the contractor at any time through completion of this contract and which are incorporated or embodied in the construction of the facility or which are utilized in the operation of the facility or which cover articles, materials, or products manufactured at the facility

(1) to practice or have practiced by or for the Government at the facility, and

(2) to transfer such license with the transfer of that facility. The acceptance or exercise by the Government of these rights shall not prevent the Government at any time from contesting the enforceability, validity or scope of, or title to, any rights or patents herein licensed.

CLAUSE I.108 - DEAR 970.5204-75 PREEXISTING CONDITIONS - ALTERNATE 1 (JUN 1997)

(a) Any liability, obligation, loss, damage, claim (including without limitation, a claim involving strict or absolute liability), action, suit, civil fine or penalty, cost, expense or disbursement, which may be incurred or imposed, or asserted by any party and arising out of any condition, act or failure to act which occurred before July 1, 1995, in conjunction with the management and operation of Thomas Jefferson National Accelerator Facility, shall be deemed incurred under Contract No. DE-AC05-84ER-

40150 as it existed prior to July 1, 1995 and at the time such liability, obligation, loss, damage, claim, action, suit, civil fine or penalty, cost expense, or disbursement arose.

(b) The obligations of the Department of Energy under this clause are subject to the availability of appropriated funds.

CLAUSE I.109 - DEAR 970.5204-76 MAKE-OR-BUY PLAN (JUN 1997)

(a) Definitions.

Buy item means a work activity, supply, or service to be produced or performed by an outside source, including a subcontractor or an affiliate, subsidiary, or division of the Contractor.

Make item means a work activity, supply, or service to be produced or performed by the Contractor using its personnel and other resources at the Department of Energy facility or site.

Make-or-Buy plan means a Contractor's written program for the contract that identifies work efforts or requirements that either are "make items" or "buy items."

(b) Make-or-Buy Plan. The Contractor shall develop and implement a Make-or-Buy Plan that establishes a preference for providing supplies and services on a least-cost basis, subject to any specific make or buy criteria identified in the contract or otherwise provided by the Contracting Officer. In developing and implementing its Make-or-Buy Plan, the Contractor agrees to assess subcontracting opportunities and implement subcontracting decisions in accordance with the following:

(1) The Contractor shall conduct internal productivity improvement and cost-reduction programs so that in-house performance options can be made more efficient and cost-effective.

(2) The Contractor shall consider subcontracting opportunities with the maximum practicable regard for open communications with potentially affected employees and their representatives. Similarly, a Contractor shall communicate its plans, activities, cost-benefit analyses, and decisions to those stakeholders, including representatives of the community and local businesses, likely to be affected by such decisions.

(c) Submission and approval. For new contract awards, the Contractor shall submit an initial make-or-buy plan, for approval, within 180 days after the contract award.

If the existing contract is to be extended, the Contractor shall submit a Make-or-Buy Plan for review and approval at least 90 days prior to the commencement of the negotiations for the extension. The following documentation shall be prepared and submitted:

(1) A description of each work item, and if appropriate, the identification of the associated Work Authorization or Work Breakdown Structure element;

(2) The categorization of each work item as "must make," "must buy," or "can make or buy," with the reasons for such categorization in consideration of the program specific make or buy criteria (including least cost considerations). For non-core capabilities categorized as "must make", a cost/benefit analysis must be performed for each item if:

(i) the Contractor is not the least-cost performer, and

(ii) a program specific make-or-buy criterion does not otherwise justify a "must make" categorization;

(3) A decision to either "make" or "buy" in consideration of the program specific make or buy criteria (including least cost considerations) for work effort categorized as "can make or buy";

(4) Identification of potential suppliers and subcontractors, if known, and their location and size status;

(5) A recommendation to defer a make or buy decision where categorization of an identifiable work effort is impracticable at the time of initial development of the plan and a schedule for future re-evaluation;

(6) A description of the impact of a change in current practice of making or buying on the existing work force; and

(7) Any additional information appropriate to support and explain the plan.

(d) Conduct of operations. Once a make-or-buy plan is approved, the Contractor shall perform in accordance with the plan.

(e) Changes to the make-or-buy plan. The make-or-buy plan established in accordance with paragraph (b) of this clause shall remain in effect for the term of the contract, unless:

(1) A lesser period is provided either for the total plan or for individual items or work effort;

(2) The circumstances supporting the make-or-buy decisions change, or

(3) New work is identified.

At least annually, the Contractor shall review its approved make-or-buy plan to ensure that it reflects current conditions. Changes to the approved make-or-buy plan shall be

submitted in advance of the effective date of the proposed change in sufficient time to permit evaluation and review. Changes shall be submitted in accordance with the instructions provided by the Contracting Officer. Modification of the make-or-buy plan to incorporate proposed changes or additions shall be effective upon the Contractor's receipt of the Contracting Officer's written approval.

CLAUSE I.110 - DEAR 970.5204-78 LAWS, REGULATIONS, AND DOE DIRECTIVES (JUN 1997) (DEVIATION)

(a) In performing work under this contract, the Contractor shall comply with the requirements of applicable Federal, State, and local laws and regulations (including DOE regulations), unless relief has been granted in writing by the appropriate regulatory agency. A List of Applicable Laws and Regulations Part III, Section J (Appendix E/List A) may be appended to this contract for information purposes. Omission of any applicable law or regulation from Part III, Section J Appendix E/List A does not affect the obligation of the Contractor to comply with such law or regulation pursuant to this paragraph.

(b) In performing work under this contract, the Contractor shall comply with the requirements of those Department of Energy directives, or parts thereof, identified in the List of Applicable Directives Part III, Section J, (Appendix E/List B) appended to this contract. Except as otherwise provided for in paragraph (c) of this clause, the Contracting Officer may, from time to time and at any time, revise Part III, Section J, Appendix E/List B by unilateral modification to the contract to add, modify, or delete specific requirements. Prior to revising Part III, Section J, Appendix E/List B, the Contracting Officer shall notify the Contractor in writing of the Department's intent to revise Part III, Section J, Appendix E/List B and provide the Contractor with the opportunity to assess the effect of the Contractor's compliance with the revised list on contract cost and funding, technical performance, and schedule; and identify any potential inconsistencies between the revised list and the other terms and conditions of the contract. Within 30 days after receipt of the Contracting Officer's notice, the Contractor shall advise the Contracting Officer in writing of the potential impact of the Contractor's compliance with the revised list. Based on the information provided by the Contractor and any other information available, the Contracting Officer shall decide whether to revise Part III, Section J, Appendix E/List B and so advise the Contractor not later than 30 days prior to the effective date of the revision of Part III, Section J, Appendix E/List B. The Contractor and the Contracting Officer shall identify and, if appropriate, agree to any changes to other contract terms and conditions, including cost and schedule, associated with the revision of Part III, Section J, Appendix E/List B pursuant to the clause entitled, Changes, of this contract.

(c) Environmental, safety, and health (ES&H) requirements appropriate for work conducted under this contract may be determined by a DOE approved process to evaluate the work and the associated hazards and identify an appropriately tailored set of standards, practices, and controls, such as a tailoring process included in a DOE approved Safety

Management System implemented under 48 CFR (DEAR) 970.5204-2. When such a process is used, the set of tailored ES&H requirements, as approved by DOE pursuant to the process, shall be incorporated into Appendix E/List B as contract requirements with full force and effect. These requirements shall supersede, in whole or in part, the contractual environmental, safety, and health requirements previously made applicable to the contract by Appendix E/List B. If the tailored set of requirements identifies an alternative requirement varying from an ES&H requirement of an applicable law or regulation, the Contractor shall request an exemption or other appropriate regulatory relief specified in the regulation.

(d) The Contractor is responsible for compliance with the requirements made applicable to this contract, regardless of the performer of the work. The Contractor is responsible for flowing down the necessary provisions to subcontracts at any tier to which the Contractor determines such requirements apply.

CLAUSE I.111 - DEAR 970.5204-79 ACCESS TO AND OWNERSHIP OF RECORDS (JUN 1997)

(a) Government-owned Records. Except as provided in paragraph (b) of this clause, all records acquired or generated by the Contractor in its performance of this contract shall be the property of the Government and shall be delivered to the Government or otherwise disposed of by the Contractor either as the Contracting Officer may from time to time direct during the progress of the work or, in any event, as the Contracting Officer shall direct upon completion or termination of the contract.

(b) Contractor-owned Records. The following records are considered the property of the Contractor and are not within the scope of paragraph (a) of this clause.

(1) Employment-related records (such as workers' compensation files; employee relations records, records on salary and employee benefits; drug testing records, labor negotiation records; records on ethics, employee concerns, and other employee related investigations conducted under an expectation of confidentiality; employee assistance program records; and personnel and medical/health-related records and similar files), except for those records described by the contract as being maintained in Privacy Act systems of records.

(2) Confidential contractor financial information, and correspondence between the Contractor and other segments of the Contractor located away from the DOE facility (i.e., the Contractor's corporate headquarters);

(3) Records relating to any procurement action by the Contractor except for records that under 48 CFR (DEAR) 970.5204-9, Accounts, Records and Inspection, are described as the property of the Government; and

(4) Legal records, including legal opinions, litigation files, and documents covered by the attorney-client and attorney work product privileges; and

(5) The following categories of records maintained pursuant to the technology transfer clause of this contract:

(i) Executed license agreements, including exhibits or appendices containing information on royalties, royalty rates, other financial information, or commercialization plans, and all related documents, notes and correspondence.

(ii) The Contractor's protected Cooperative Research and Development Agreement (CRADA) information and appendices to a CRADA that contain licensing terms and conditions, or royalty or royalty rate information.

(iii) Patent, copyright, mask work, and trademark application files and related Contractor invention disclosures, documents and correspondence, where the Contractor has elected rights or has permission to assert rights and has not relinquished such rights or turned such rights over to the Government.

(c) Contract Completion or Termination. In the event of completion or termination of this contract, copies of any of the Contractor-owned records identified in paragraph (b) of this clause, upon the request of the Government, shall be delivered to DOE or its designees, including successor contractors. Upon delivery, title to such records shall vest in DOE or its designees, and such records shall be protected in accordance with applicable federal laws (including the Privacy Act), as appropriate.

(d) Inspection, Copying, and Audit of Records. All records acquired or generated by the Contractor under this contract in the possession of the Contractor, including those described at paragraph (b) of this clause, shall be subject to inspection, copying, and audit by the Government or its designees at all reasonable times, and the Contractor shall afford the Government or its designees reasonable facilities for such inspection, copying, and audit; provided, however, that upon request by the Contracting Officer, the Contractor shall deliver such records to a location specified by the Contracting Officer for inspection, copying, and audit. The Government or its designees shall use such records in accordance with applicable federal laws (including the Privacy Act), as appropriate.

(e) Applicability. Paragraphs (b), (c), and (d) of this clause apply to all records without regard to the date or origination of such records.

(f) Records retention standards. Special records retention standards, described at DOE Order 1324.5B, Records Management Program and DOE Records

Schedules (version in effect on effective date of contract), are applicable for the classes of records described therein, whether or not the records are owned by the Government or the Contractor. In addition, the Contractor shall retain individual radiation exposure records generated in the performance of work under this contract until DOE authorizes disposal. The Government may waive application of these record retention schedules, if, upon termination or completion of the contract, the Government exercises its right under paragraph (c) of this clause to obtain copies and delivery of records described in paragraphs (a) and (b) of this clause.

(g) Flow down. The Contractor shall include the requirements of this clause in all subcontracts that are of a cost-reimbursement type if any of the following factors is present:

(1) The value of the subcontract is greater than $2 million (unless specifically waived by the Contracting Officer);

(2) The Contracting Officer determines that the subcontract is, or involves, a critical task related to the contract; or

(3) The subcontract includes 48 CFR (DEAR) 970.5204-2, Integration of Environment, Safety, and Health into Work Planning and Execution, or similar clause.

CLAUSE I.112 - DEAR 970.5204-80 OVERTIME MANAGEMENT (JUN 1997)

(a) The Contractor shall maintain adequate internal controls to ensure that employee overtime is authorized only if cost effective and necessary to ensure performance of work under this contract.

(b) The Contractor shall notify the Contracting Officer when in any given year it is likely that overtime usage as a percentage of payroll may exceed 4%.

(c) The Contracting Officer may require the submission, for approval, of a formal annual overtime control plan whenever Contractor overtime usage as a percentage of payroll has exceeded, or is likely to exceed, 4%, or if the Contracting Officer otherwise deems overtime expenditures excessive. The plan shall include, at a minimum:

(1) An overtime premium fund (maximum dollar amount);

(2) Specific controls for casual overtime for non-exempt employees;

(3) Specific parameters for allowability of exempt overtime;

(4) An evaluation of alternatives to the use of overtime; and

(5) Submission of a semi-annual report that includes for exempt and non-exempt employees:

(i) Total cost of overtime;

(ii) Total cost of straight time;

(iii) Overtime cost as a percentage of straight-time cost;

(iv) Total overtime hours;

(v) Total straight-time hours; and

(vi) Overtime hours as a percentage of straight-time hours.

CLAUSE I.113 - DEAR 970.5204-81 DIVERSITY PLAN (DEC 1997)

The Contractor shall submit a Diversity Plan to the Contracting Officer for approval within 90 days after the effective date of this modification. The Contractor shall submit an update to its Plan with its annual fee proposal. Guidance for preparation of a Diversity Plan is provided in Part III, Section J, Appendix K. The Plan shall include innovative strategies for increasing opportunities to fully use the talents and capabilities of a diverse work force. The Plan shall address, at a minimum, the Contractor's approach for promoting diversity through (1) the Contractor's work force, (2) educational outreach, (3) community involvement and outreach, (4) subcontracting, and (5) economic development (including technology transfer).

CLAUSE I.114 - DEAR 970.5204-83 RIGHTS IN DATA-TECHNOLOGY TRANSFER (FEB 1998)

(a) Definitions.

(1) Computer data bases, as used in this clause, means a collection of data in a form capable of, and for the purpose of, being stored in, processed, and operated on by a computer. The term does not include computer software.

(2) Computer software, as used in this clause, means (i) computer programs which are data comprising a series of instructions, rules, routines, or statements, regardless of the media in which recorded, that allow or cause a computer to perform a specific operation or series of operations and (ii) data comprising source code listings, design details, algorithms, processes, flow charts, formulae, and related material that would enable the computer program to be produced, created, or compiled. The term does not include computer data bases.

(3) Data, as used in this clause, means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software. The term “data” does not include data incidental to the administration of this contract, such as financial, administrative, cost and pricing, or management information.

(4) Limited rights data, as used in this clause, means data, other than computer software, developed at private expense that embody trade secrets or are commercial or financial and confidential or privileged. The Government's rights to use, duplicate, or disclose limited rights data are as set forth in the Limited Rights Notice of paragraph (g) of this clause.

(5) Restricted computer software, as used in this clause, means computer software developed at private expense and that is a trade secret; is commercial or financial and is confidential or privileged; or is published copyrighted computer software, including minor modifications of any such computer software. The Government's rights to use, duplicate, or disclose restricted computer software are as set forth in the Restricted Rights Notice of subparagraph (h) of this clause.

(6) Technical data, as used in this clause, means recorded data, regardless of form or characteristic, that are of a scientific or technical nature. Technical data does not include computer software, but does include manuals and instructional materials and technical data formatted as a computer data base.

(7) Unlimited rights, as used in this clause, means the rights of the Government to use, disclose, reproduce, prepare derivative works, distribute copies to the public, including by electronic means, and perform publicly and display publicly, in any manner, including by electronic means, and for any purpose whatsoever, and to have or permit others to do so.

(b) Allocation of Rights.

(1) The Government shall have:

(i) Ownership of all technical data and computer software first produced in the performance of this Contract;

(ii) Unlimited rights in technical data and computer software specifically used in the performance of this Contract, except as provided herein regarding copyright, limited rights data, or restricted computer software, and except for data subject to the withholding provisions for protected Cooperative Research and Development Agreement (CRADA) information in accordance with Technology Transfer actions under this Contract, or other data specifically protected by statute for a period of time or, where, approved by DOE, appropriate instances of the DOE Work for Others Program;

(iii) The right to inspect technical data and computer software first produced or specifically used in the performance of this Contract at all reasonable times. The Contractor shall make available all necessary facilities to allow DOE personnel to perform such inspection;

(iv) The right to have all technical data and computer software first produced or specifically used in the performance of this Contract delivered to the Government or otherwise disposed of by the Contractor, either as the Contracting Officer may from time to time direct during the progress of the work or in any event as the Contracting Officer shall direct upon completion or termination of this Contract. The Contractor agrees to leave a copy of such data at the facility or plant to which such data relate, and to make available for access or to deliver to the Government such data upon request by the Contracting Officer. If such data are limited rights data or restricted computer software, the rights of the Government in such data shall be governed solely by the provisions of paragraph (g) of this clause ("Rights in Limited Rights Data") or paragraph (h) of this clause ("Rights in Restricted Computer Software"); and

(v) The right to remove, cancel, correct, or ignore any markings not authorized by the terms of this Contract on any data furnished hereunder if, in response to a written inquiry by DOE concerning the propriety of the markings, the Contractor fails to respond thereto within 60 days or fails to substantiate the propriety of the markings. In either case DOE will notify the Contractor of the action taken.

(2) The Contractor shall have:

(i) The right to withhold limited rights data and restricted computer software unless otherwise provided in provisions of this clause;

(ii) The right to use for its private purposes, subject to patent, security or other provisions of this Contract, data it first produces in the performance of this Contract, except for data in DOE's Uranium Enrichment Technology, including diffusion, centrifuge, and atomic vapor laser isotope separation, provided the data requirements of this Contract have been met as of the date of the private use of such data; and

(iii) The right to assert copyright subsisting in scientific and technical articles as provided in paragraph (d) of this clause and the right to request permission to assert copyright subsisting in works other than scientific and technical articles as provided in paragraph (e) of this clause.

(3) The Contractor agrees that for limited rights data or restricted computer software or other technical business or financial data in the form of recorded information

which it receives from, or is given access to by DOE or a third party, including a DOE contractor or subcontractor, and for technical data or computer software it first produces under this Contract which is authorized to be marked by DOE, the Contractor shall treat such data in accordance with any restrictive legend contained thereon.

(c) Copyright (General).

(1) The Contractor agrees not to mark, register, or otherwise assert copyright in any data in a published or unpublished work, other than as set forth in paragraphs (d) and (e) of this clause.

(2) Except for material to which the Contractor has obtained the right to assert copyright in accordance with either paragraph (d) or (e) of this clause, the Contractor agrees not to include in the data delivered under this Contract any material copyrighted by the Contractor and not to knowingly include any material copyrighted by others without first granting or obtaining at no cost a license therein for the benefit of the Government of the same scope as set forth in paragraph (d) of this clause. If the Contractor believes that such copyrighted material for which the license cannot be obtained must be included in the data to be delivered, rather than merely incorporated therein by reference, the Contractor shall obtain the written authorization of the Contracting Officer to include such material in the data prior to its delivery.

(d) Copyrighted works (scientific and technical articles).

(1) The Contractor shall have the right to assert, without prior approval of the Contracting Officer, copyright subsisting in scientific and technical articles composed under this contract or based on or containing data first produced in the performance of this Contract, and published in academic, technical or professional journals, symposia, proceedings, or similar works. When assertion of copyright is made, the Contractor shall affix the applicable copyright notice of 17 U.S.C. 401 or 402 and acknowledgment of Government sponsorship (including contract number) on the data when such data are delivered to the Government as well as when the data are published or deposited for registration as a published work in the U.S. Copyright Office. The Contractor grants to the Government, and others acting on its behalf, a nonexclusive, paid-up, irrevocable, world-wide license in such copyrighted data to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government.

(2) The Contractor shall mark each scientific or technical article first produced or composed under this Contract and submitted for journal publication or similar means of dissemination with a notice, similar in all material respects to the following, on the front reflecting the Government's non-exclusive, paid-up, irrevocable, world-wide license in the copyright.

Notice: This manuscript has been authored by The Southeastern Universities Research Association, Inc. under Contract No. DE-AC05-84ER-40150 with the U.S. Department of Energy. The United States Government retains and the publisher, by accepting the article for publication, acknowledges that the United States Government retains a non-exclusive, paid-up, irrevocable, world-wide license to publish or reproduce the published form of this manuscript, or allow others to do so, for United States Government purposes.

(End of Notice)

(3) The title to the copyright of the original of unclassified graduate theses and the original of related unclassified scientific papers shall vest in the author thereof, subject to the right of DOE to retain duplicates of such documents and to use such documents for any purpose whatsoever without any claim on the part of the author or the contractor for additional compensation.

(e) Copyrighted works (other than scientific and technical articles and data produced under a CRADA). The Contractor may obtain permission to assert copyright subsisting in technical data and computer software first produced by the Contractor in performance of this Contract, where the Contractor can show that commercialization would be enhanced by such copyright protection, subject to the following:

(1) Contractor Request to Assert Copyright.

(i) For data other than scientific and technical articles and data produced under a CRADA, the Contractor shall submit in writing to Patent Counsel its request to assert copyright in data first produced in the performance of this Contract pursuant to this clause. The right of the Contractor to copyright data first produced under a CRADA is as described in the individual CRADA. Each request by the Contractor must include:

(A) The identity of the data (including any computer program) for which the Contractor requests permission to assert copyright, as well as an abstract which is descriptive of the data and is suitable for dissemination purposes,

(B) The program under which it was funded,

(C) Whether, to the best knowledge of the Contractor, the data is subject to an international treaty or agreement,

(D) Whether the data is subject to export control,

(E) A statement that the Contractor plans to commercialize the data in compliance with the clause of this contract entitled “Technology

Transfer Mission," within five (5) years after obtaining permission to assert copyright or, on a case-by-case basis, a specified longer period where the Contractor can demonstrate that the ability to commercialize effectively is dependent upon such longer period, and

(F) For data other than computer software, a statement explaining why the assertion of copyright is necessary to enhance commercialization and is consistent with DOE's dissemination responsibilities.

(ii) For data that is developed using other funding sources in addition to DOE funding, the permission to assert copyright in accordance with this clause must also be obtained by the Contractor from all other funding sources prior to the Contractor's request to Patent Counsel. The request shall include the Contractor's certification or other documentation acceptable to Patent Counsel demonstrating such permission has been obtained.

(iii) Permission for the Contractor to assert copyright in excepted categories of data as determined by DOE will be expressly withheld. Such excepted categories include data whose release (A) would be detrimental to national security, i.e., involve classified information or data or sensitive information under Section 148 of the Atomic Energy Act of 1954, as amended, or are subject to export control for nonproliferation and other nuclear-related national security purposes, (B) would not enhance the appropriate transfer or dissemination and commercialization of such data, (C) would have a negative impact on U.S. industrial competitiveness, (D) would prevent DOE from meeting its obligations under treaties and international agreements, or (E) would be detrimental to one or more of DOE's programs. Additional excepted categories may be added by the Assistant General Counsel for Technology Transfer and Intellectual Property. Where data are determined to be under export control restriction, the Contractor may obtain permission to assert copyright subject to the provisions of this clause for purposes of limited commercialization in a manner that complies with export control statutes and applicable regulations. In addition, notwithstanding any other provision of this Contract, all data developed with Naval Reactors' funding and those data that are classified fall within excepted categories. The rights of the Contractor in data are subject to the disposition of data rights in the treaties and international agreements identified under this Contract as well as those additional treaties and international agreements which DOE may from time to time identify by unilateral amendment to the Contract; such amendment listing added treaties and international agreements is effective only for data which is developed after the date such treaty or international agreement is added to this Contract. Also, the Contractor will not be permitted to assert copyright in data in the form of

various technical reports generated by the Contractor under the Contract without first obtaining the advanced written permission of the Contracting Officer.

(2) DOE Review and Response to Contractor's Request. The Patent Counsel shall use its best efforts to respond in writing within 90 days of receipt of a complete request by the Contractor to assert copyright in technical data and computer software pursuant to this clause. Such response shall either give or withhold DOE's permission for the Contractor to assert copyright or advise the Contractor that DOE needs additional time to respond and the reasons therefor.

(3) Permission for Contractor to Assert Copyright.

(i) For computer software, the Contractor shall furnish to the DOE designated, centralized software distribution and control point, the Energy Science and Technology Software Center, at the time permission to assert copyright is given under paragraph (e)(2) of this clause: (A) an abstract describing the software suitable for publication, (B) the source code for each software program, and (C) the object code and at least the minimum support documentation needed by a technically competent user to understand and use the software. The Patent Counsel, for good cause shown by the Contractor, may allow the minimum support documentation to be delivered within 60 days after permission to assert copyright is given or at such time the minimum support documentation becomes available. The Contractor acknowledges that the DOE designated software distribution and control point may provide a technical description of the software in an announcement identifying its availability from the copyright holder.

(ii) Unless otherwise directed by the Contracting Officer, for data other than computer software to which the Contractor has received permission to assert copyright under paragraph (e)(2) of this clause above, the Contractor shall within sixty (60) days of obtaining such permission furnish to DOE's Office of Scientific and Technical Information (OSTI) a copy of such data as well as an abstract of the data suitable for dissemination purposes. The Contractor acknowledges that OSTI may provide an abstract of the data in an announcement to DOE, its contractors and to the public identifying its availability from the copyright holder.

(iii) For a five year period or such other specified period as specifically approved by Patent Counsel beginning on the date the Contractor is given permission to assert copyright in data, the Contractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable worldwide license in such copyrighted data to reproduce, prepare derivative works and perform publicly and display publicly, by or

on behalf of the Government. Upon request, the initial period may be extended after DOE approval. The DOE approval will be based on the standard that the work is still commercially available and the market demand is being met.

(iv) After the period approved by Patent Counsel for application of the limited Government license described in paragraph (e)(3)(iii) of this clause, or if, prior to the end of such period(s), the Contractor abandons commercialization activities pertaining to the data to which the Contractor has been given permission to assert copyright, the Contractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable worldwide license in such copyrighted data to reproduce, distribute copies to the public, prepare derivative works, perform publicly and display publicly, and to permit others to do so.

(v) Whenever the Contractor asserts copyright in data pursuant to this paragraph (e), the Contractor shall affix the applicable copyright notice of 17 U.S.C. 401 or 402 on the copyrighted data and also an acknowledgment of the Government sponsorship and license rights of paragraphs (e)(3) (iii) and (iv) of this clause. Such action shall be taken when the data are delivered to the Government, published, licensed or deposited for registration as a published work in the U.S. Copyright Office. The acknowledgment of Government sponsorship and license rights shall be as follows:

Notice: These data were produced by The Southeastern Universities Research Association, Inc. under Contract No. DE-AC05-84ER-40150 with the Department of Energy. For (period approved by DOE Patent Counsel) from (date permission to assert copyright was obtained), the Government is granted for itself and others acting on its behalf a nonexclusive, paid-up, irrevocable worldwide license in this data to reproduce, prepare derivative works, and perform publicly and display publicly, by or on behalf of the Government. There is provision for the possible extension of the term of this license. Subsequent to that period or any extension granted, the Government is granted for itself and others acting on its behalf a nonexclusive, paid-up, irrevocable worldwide license in this data to reproduce, prepare derivative works, distribute copies to the public, perform publicly and display publicly, and to permit others to do so. The specific term of the license can be identified by inquiry made to Contractor or DOE. Neither the United States nor the United States Department of Energy, nor any of their employees, makes any warranty, express or implied, or assumes any legal liability or responsibility for the accuracy, completeness, or usefulness of any data, apparatus, product, or process disclosed, or represents that its use would not infringe privately owned rights.

(End of Notice)

(vi) With respect to any data to which the Contractor has received permission to assert copyright, the DOE has the right, during the five (5) year or specified longer period approved by Patent Counsel as provided for in paragraph (e) of this clause, to request the Contractor to grant a nonexclusive, partially exclusive or exclusive license in any field of use to a responsible applicant(s) upon terms that are reasonable under the circumstances, and if the Contractor refuses such request, to grant such license itself, if the DOE determines that the Contractor has not made a satisfactory demonstration that either it or its licensee(s) is actively pursuing commercialization of the data as set forth in subparagraph (e)(1)(A) of this clause. Before licensing under this subparagraph (vi), DOE shall furnish the Contractor a written request for the Contractor to grant the stated license, and the Contractor shall be allowed thirty (30) days (or such longer period as may be authorized by the Contracting Officer for good cause shown in writing by the Contractor) after such notice to show cause why the license should not be granted. The Contractor shall have the right to appeal the decision of the DOE to grant the stated license to the Invention Licensing Appeal Board as set forth in 10 CFR 781.65--“Appeals”

(vii) No costs shall be allowable for maintenance of copyrighted data, primarily for the benefit of the Contractor and/or a licensee which exceeds DOE Program needs, except as expressly provided in writing by the Contracting Officer. The Contractor may use its net royalty income to effect such maintenance costs.

(viii) At any time the Contractor abandons commercialization activities for data for which the Contractor has received permission to assert copyright in accordance with this clause, it shall advise OSTI and Patent Counsel and upon request assign the copyright to the Government so that the Government can distribute the data to the public.

(4) The following notice may be placed on computer software prior to any publication and prior to the Contractor's obtaining permission from the Department of Energy to assert copyright in the computer software pursuant to paragraph (c)(3) of this section.

Notice: This computer software was prepared by the Southeastern Universities Research Association, Inc. and [insert the individual author], hereinafter the Contractor, under Contract No. DE-AC05-84ER-40150 with the Department of Energy (DOE). All rights in the computer software are reserved by DOE on behalf of the United States Government and the Contractor as provided in the Contract. You are authorized to use this computer software for Governmental purposes but it is not to be released or distributed to the public. NEITHER THE

GOVERNMENT NOR THE CONTRACTOR MAKES ANY WARRANTY, EXPRESS OR IMPLIED, OR ASSUMES ANY LIABILITY FOR THE USE OF THIS SOFTWARE. This notice including this sentence must appear on any copies of this computer software.

(End of Notice)

(5) A similar notice can be used for data, other than computer software, upon approval of DOE Patent Counsel.

(f) Subcontracting.

(1) Unless otherwise directed by the Contracting Officer, the Contractor agrees to use in subcontracts in which technical data or computer software is expected to be produced or in subcontracts for supplies that contain a requirement for production or delivery of data in accordance with the policy and procedures of 48 CFR (FAR) Subpart 27.4 as supplemented by 48 CFR (DEAR) 927.401 through 927.409, the clause entitled “Rights in Data-General” at 48 CFR 52.227-14 modified in accordance with 927.409(a) and including Alternate V. Alternates II through IV of that clause may be included as appropriate with the prior approval of DOE Patent Counsel, and the Contractor shall not acquire rights in a subcontractor's limited rights data or restricted computer software, except through the use of Alternates II or III, respectively, without the prior approval of DOE Patent Counsel. The clause at FAR 52.227-16, Additional Data Requirements, shall be included in subcontracts in accordance with DEAR 927.409(h). The Contractor shall use instead the Rights in Data--Facilities clause at DEAR 970.5204-82 in subcontracts, including subcontracts for related support services, involving the design or operation of any plants or facilities or specially designed equipment for such plants or facilities that are managed or operated under its contract with DOE.

(2) It is the responsibility of the Contractor to obtain from its subcontractors technical data and computer software and rights therein, on behalf of the Government, necessary to fulfill the Contractor's obligations to the Government with respect to such data. In the event of refusal by a subcontractor to accept a clause affording the Government such rights, the Contractor shall:

(i) Promptly submit written notice to the Contracting Officer setting forth reasons or the subcontractor's refusal and other pertinent information which may expedite disposition of the matter, and

(ii) Not proceed with the subcontract without the written authorization of the Contracting Officer.

(3) Neither the Contractor nor higher-tier subcontractors shall use their power to award subcontracts as economic leverage to acquire rights in a subcontractor's limited rights data and restricted computer software for their private use.

(g) Rights in Limited Rights Data.

Except as may be otherwise specified in this Contract as data which are not subject to this paragraph, the Contractor agrees to and does hereby grant to the Government an irrevocable nonexclusive, paid-up license by or for the Government, in any limited rights data of the Contractor specifically used in the performance of this Contract, provided, however, that to the extent that any limited rights data when furnished or delivered is specifically identified by the Contractor at the time of initial delivery to the Government or a representative of the Government, such data shall not be used within or outside the Government except as provided in the "Limited Rights Notice" set forth below. All such limited rights data shall be marked with the following "Limited Rights Notice:"

Limited Rights Notice

These data contain "limited rights data," furnished under Contract No. DE-AC05-84ER-40150 with the United States Department of Energy which may be duplicated and used by the Government with the express limitations that the "limited rights data" may not be disclosed outside the Government or be used for purposes of manufacture without prior permission of the Contractor, except that further disclosure or use may be made solely for the following purposes:

(a) Use (except for manufacture) by support services contractors within the scope of their contracts;

(b) This "limited rights data" may be disclosed for evaluation purposes under the restriction that the "limited rights data" be retained in confidence and not be further disclosed;

(c) This "limited rights data" may be disclosed to other contractors participating in the Government's program of which this Contract is a part for information or use (except for manufacture) in connection with the work performed under their contracts and under the restriction that the "limited rights data" be retained in confidence and not be further disclosed;

(d) This "limited rights data" may be used by the Government or others on its behalf for emergency repair or overhaul work under the restriction that the "limited rights data" be retained in confidence and not be further disclosed; and

(e) Release to a foreign government, or instrumentality thereof, as the interests of the United States Government may require, for information or evaluation, or for emergency repair or overhaul work by such government.

This Notice shall be marked on any reproduction of this data in whole or in part.

(End of Notice)

(h) Rights in Restricted Computer Software.

(1) Except as may be otherwise specified in this Contract as data which are not subject to this paragraph, the Contractor agrees to and does hereby grant to the Government an irrevocable, nonexclusive, paid-up, license by or for the Government, in any restricted computer software of the Contractor specifically used in the performance of this Contract; provided, however, that to the extent that any restricted computer software when furnished or delivered is specifically identified by the Contractor at the time of initial delivery to the Government or a representative of the Government, such data shall not be used within or outside the Government except as provided in the "Restricted Rights Notice" set forth below. All such restricted computer software shall be marked with the following "Restricted Rights Notice:"

Restricted Rights Notice--Long Form

(a) This computer software is submitted with restricted rights under Department of Energy Contract No. DE-AC05-84ER-40150. It may not be used, reproduced, or disclosed by the Government except as provided in paragraph (b) of this notice.

(b) This computer software may be:

(1) Used or copied for use in or with the computer or computers for which it was acquired, including use at any Government installation to which such computer or computers may be transferred;

(2) Used, copied for use, in a backup or replacement computer if any computer for which it was acquired is inoperative or is replaced;

(3) Reproduced for safekeeping (archives) or backup purposes;

(4) Modified, adapted, or combined with other computer software, provided that only the portions of the derivative software consisting of the restricted computer software are to be made subject to the same restricted rights; and

(5) Disclosed to and reproduced for use by contractors under a service contract (of the type defined in FAR 37.101) in accordance with subparagraphs (b)(1) through (4) of this Notice, provided the

Government makes such disclosure or reproduction subject to these restricted rights.

(c) Notwithstanding the foregoing, if this computer software has been published under copyright, it is licensed to the Government, without disclosure prohibitions, with the rights set forth in the restricted rights notice above.

(d) This Notice shall be marked on any reproduction of this computer software, in whole or in part.

(End of Notice)

(2) Where it is impractical to include the Restricted Rights Notice on restricted computer software, the following short-form Notice may be used in lieu thereof:

Restricted Rights Notice--Short Form

Use, reproduction, or disclosure is subject to restrictions set forth in the Long Form Notice of DOE Contract No. DE-AC05-84ER-40150 with The Southeastern Universities Research Association, Inc.

(End of Notice)

(3) If the software is embedded, or if it is commercially impractical to mark it with human readable text, then the symbol R and the clause date (mo/yr) in brackets or a box, a [R-mo/yr], may be used. This will be read to mean restricted computer software, subject to the rights of the Government as described in the Long Form Notice, in effect as of the date indicated next to the symbol. The symbol shall not be used to mark human readable material. In the event this Contract contains any variation to the rights in the Long Form Notice, then the contract number must also be cited.

(4) If restricted computer software is delivered with the copyright notice of 17 U.S.C. 401, the software will be presumed to be published copyrighted computer software licensed to the Government without disclosure prohibitions and with unlimited rights, unless the Contractor includes the following statement with such copyright notice “Unpublished-rights reserved under the Copyright Laws of the United States.”

(i) Relationship to patents.

Nothing contained in this clause creates or is intended to imply a license to the Government in any patent or is intended to be construed as affecting the scope of any licenses or other rights otherwise granted to the Government under any patent.

CLAUSE I.115 - DEAR 970.5204-85 REDUCTION OR SUSPENSION OF ADVANCE, PARTIAL, OR PROGRESS PAYMENTS (DEC 1997)

(a) The Contracting Officer may reduce or suspend further advance, partial, or progress payments to the Contractor upon a written determination by the Secretary that substantial evidence exists that the Contractor's request for advance, partial, or progress payment is based on fraud.

(b) The Contractor shall be afforded a reasonable opportunity to respond in writing.

CLAUSE I.116 – DEAR 970.5201-86 CONDITIONAL PAYMENT OF FEE, PROFIT, OR INCENTIVE (APR 1999)

In order for the Contractor to receive all otherwise earned fee, fixed fee, profit, or share of cost savings under the contract in an evaluation period, the Contractor must meet the minimum requirements in paragraphs (a) and (b) of this clause and if Alternate I is applicable (a) through (d) of this clause. If the Contractor does not meet the minimum requirements, the DOE Operations/Field Office Manager or designee may make a unilateral determination to reduce the evaluation period's otherwise earned fee, fixed fee, profit or share of cost savings as described in the following paragraphs of this clause.

(a) Minimum requirements for Environment, Safety & Health (ES&H) Program. The Contractor shall develop, obtain DOE approval of, and implement a Safety Management System in accordance with the provisions of the clause entitled, "Integration of Environment, Safety and Health into Work Planning and Execution," if included in the contract, or as otherwise agreed to with the Contracting Officer. The minimal performance requirements of the system will be set forth in the approved Safety Management System, or similar document. If the Contractor fails to obtain approval of the Safety Management System or fails to achieve the minimum performance requirements of the system during the evaluation period, the DOE Operations/Field Office Manager or designee, at his/her sole discretion, may reduce any otherwise earned fees, fixed fee, profit or share of cost savings for the evaluation period by an amount up to the amount earned.

(b) Minimum requirements for catastrophic event. If, in the performance of this contract, there is a catastrophic event (such as a fatality, or a serious workplace-related injury or illness to one or more Federal, contractor, or subcontractor employees or the general public, loss of control over classified or special nuclear material, or significant damage to the environment), the DOE Operations/Field Office Manager or designee may reduce any otherwise earned fee for the evaluation period by an amount up to the amount

earned. In determining any diminution of fee, fixed fee, profit, or share of cost savings resulting from a catastrophic event, the DOE Operations/Field Office Manager or designee will consider whether willful misconduct and/or negligence contributed to the occurrence and will take into consideration any mitigating circumstances presented by the contractor or other sources.

CLAUSE I.117 – DEAR 970.5204-87 COST REDUCTION (APR 1999)

(a) General. It is the Department of Energy's (DOE's) intent to have its facilities and laboratories operated in an efficient and effective manner. To this end the Contractor shall assess its operations and identify areas where cost reductions would bring cost efficiency to operations without adversely affecting the level of performance required by the contract. The Contractor, to the maximum extent practical, shall identify areas where cost reductions may be effected and develop and submit Cost Reduction Proposals (CRPs) to the Contracting Officer. If accepted, the Contractor may share in any shared net savings from accepted CRPs in accordance with paragraph (g).

(b) Definitions.

Administrative cost is the Contractor cost of developing and administering the CRP.

Design, process, or method change is a change to a design, process, or method which has an established baseline, is defined, and is subject to a formal control procedure. Such a change must be innovative, initiated by the Contractor, and applied to a specific project or program.

Development cost is the Contractor cost of up front planning, engineering, prototyping, and testing of a design, process, or method.
DOE cost is the Government cost incurred implementing and validating the CRP.

Implementation cost is the Contractor cost of tooling, facilities, documentation, etc., required to effect a design, process, or method change once it has been tested and approved.

Net Savings means a reduction in the total amount (to include all related costs and fee) of performing the effort where the savings revert to the DOE control and may be available for deobligation. Such savings may result from a specific cost reduction effort which is negotiated on a cost-plus-incentive-fee, fixed-price incentive, or firm-fixed-price basis, or may result directly from a design, process, or method change. They may also be savings resulting from formal or informal direction given by DOE or from changes in the mission, work scope, or routine reorganization of the Contractor due to changes in the budget.

Shared Net Savings are those net savings which result from:

(1) a specific cost reduction effort which is negotiated on a cost-plus-incentive-fee or fixed-price incentive basis and are the difference between the negotiated target cost of performing an effort as negotiated and the actual allowable cost of performing that effort or

(2) a design, process, or method change, occurs in the fiscal year in which the change is accepted and the subsequent fiscal year, and is the difference between the estimated cost of performing an effort as originally planned and the actual allowable cost of performing that same effort utilizing a revised plan intended to reduce costs along with any Contractor development costs, implementation costs, administrative costs, and DOE costs associated with the revised plan. Administrative costs and DOE costs are only included at the discretion of the Contracting Officer. Savings resulting from formal or informal direction given by the DOE or changes in the mission, work scope, or routine reorganization of the Contractor due to changes in the budget are not be considered as shared net savings for purposes of this clause and do not qualify for incentive sharing.

(c) Procedure for submission of CRPs.

(1) CRPs for the establishment of cost-plus-incentive-fee, fixed-price incentive, or firm-fixed-price efforts or for design, process, or methods changes submitted by the Contractor shall contain, at a minimum, the following:

(i) Current Method (Baseline) -- A verifiable description of the current scope of work, cost, and schedule to be impacted by the initiative; and supporting documentation.

(ii) New Method (Baseline) -- A verifiable description of the new scope of work, cost, and schedule, how the initiative will be accomplished; and supporting documentation.

(iii) Feasibility Assessment -- A description and evaluation of the proposed initiative and benefits, risks, and impacts of implementation. This evaluation shall include an assessment of the difference between the current method (baseline) and proposed new method including all related costs.

(2) In addition, CRPs for the establishment of cost-plus-incentive-fee, fixed-price incentive, or firm-fixed price efforts shall contain, at a minimum, the following:

(i) the proposed contractual arrangement and the justification for its use; and

(ii) a detailed cost/price estimate and supporting rationale. If the approach is proposed on an incentive basis, minimum and maximum cost estimates should be included along with any proposed sharing arrangements.

(d) Evaluation and Decision. All CRPs must be submitted to and approved by the Contracting Officer. Included in the information provided by the CRP must be a discussion of the extent the proposed cost reduction effort may:

(1) pose a risk to the health and safety of workers, the community, or to the environment;

(2) result in a waiver or deviation from DOE requirements, such as DOE Orders and joint oversight agreements;

(3) require a change in other contractual agreements;

(4) result in significant organizational and personnel impacts;

(5) create a negative impact on the cost, schedule, or scope of work in another area;

(6) pose a potential negative impact on the credibility of the Contractor or the DOE; and

(7) impact successful and timely completion of any of the work in the cost, technical, and schedule baseline.

(e) Acceptance or Rejection of CRPs. Acceptance or rejection of a CRP is a unilateral determination made by the Contracting Officer. The Contracting Officer will notify the Contractor that a CRP has been accepted, rejected, or deferred with (Insert Number) days of receipt. The only CRPs that will be considered for acceptance are those which the Contractor can demonstrate, at a minimum, will:

(1) result in net savings (in the sharing period if a design, process, or method change);

(3) not reappear as costs in subsequent periods; and

(4) not result in any impairment of essential functions.

(f) The failure of the Contracting Officer to notify the Contractor of the acceptance, rejection, or deferral of a CRP within the specified time shall not be construed as approval.

(g) Adjustment to Original Estimated Cost and Fee. If a CRP is established on a cost-plus-incentive-fee, fixed-price incentive or firm-fixed-price basis, the originally estimated cost and fee for the total effort shall be adjusted to remove the estimated cost and fee amount associated with the CRP effort.

(h) Sharing Arrangement. If a CRP is accepted, the Contractor may share in the shared net savings. For a CRP negotiated on a cost-plus-incentive-fee or fixed-price incentive basis, with the specific incentive arrangement (negotiated target costs, target fees, share lines, ceilings, profit, etc.) set forth in the contractual document authorizing the effort, the Contractor's share shall be the actual fee or profit resulting from such an arrangement. For a CRP negotiated as a cost savings incentive resulting from a design, process, or method change, the Contractor's share shall be a percentage, not to exceed 25 % of the shared net savings. The specific percentage and sharing period shall be set forth in the contractual document.

(i) Validation of Shared Net Savings. The Contracting Officer shall validate actual shared net savings. If actual shared net savings can not be validated, the Contractor will not be entitled to a share of the net shared savings.

(j) Relationship to Other Incentives. Only those benefits of an accepted CRP not rewardable under other clauses of this contract shall be rewarded under this clause.

(k) Subcontracts. The Contractor may include a clause similar to this clause in any subcontract. In calculating any estimated shared net savings in a CRP under this contract, the Contractor's administration, development, and implementation costs shall include any Subcontractor's allowable costs, and any CRP incentive payments to a Subcontractor resulting from the acceptance of such CRP. The Contractor may choose any arrangement for Subcontractor CRP incentive payments, provided that the payments not reduce the DOE's share of shared net savings.

PART III

LIST OF DOCUMENTS, EXHIBITS AND OTHER ATTACHMENTS

SECTION J - LIST OF ATTACHMENTS

TABLE OF CONTENTS